State Law Library of Montana
3 0000 00278016 5

MONTANA

CODE

ANNOTATED

1985

SMP

MONTANA CODE ANNOTATED

Adopted by Chapter 1, Laws of 1979

DIANA S. DOWLING
Code Commissioner

STATE LAW LIBRARY
DEC 12 2016
OF MONTANA

Director Legal Services
Robert C. Pyfer to June 30, 1985
Gregory J. Petesch July 1, 1985

Staff Attorneys

John MacMaster	Jim Lear
Brenda Desmond	Valencia Lane
Lee Heiman	Mary Kelly McCue

Indexers

Nadine E. Wallace	Karen Caplis

Director Legislative Services
Henry C. Trenk

Support Services

Assistant to Director
Marilynn Novak

Copy Editors
Mary Ellen Randall, Chief Editor
Doris Groot, Senior Editor
Doug Sternberg, Senior Editor
Carol Ann Jacobsen, Editor
Margaret Liles, Editor

Proofreaders
Phyllis Cote, Senior Proofreader
Marie Fuhrmann, Senior Proofreader
Kevin Hayes, Proofreader
Jeffrey M. Pennington, Proofreader

Senior Data Entry Operators/Programmers
Connie Dixon
Patricia Sternberg
Jan Vulk

Distribution
Kathy Thompson

Systems and Programming
Tom Mulvaney
Leo La Salle, Typesetting

ULATE

Published by
Montana Legislative Council
Room 138, State Capitol
Helena, Montana 59620
Telephone (406)444-3064
1985

Copyright
© 1978, 1979, 1981, 1983, 1985
by
The State of Montana

MONTANA CODE ANNOTATED
1985
CONTENTS

Volume 1

Preface
CONSTITUTION

GENERAL LAWS—STATE GOVERNMENT—COURTS—LEGISLATURE

Titles
1. General Laws and Definitions
2. Government Structure and Administration
3. Judiciary, Courts
4. Reserved
5. Legislative Branch
6. Reserved

Volume 2

LOCAL GOVERNMENT

Titles
7. Local Government
8. and 9. Reserved

Volume 3

MILITARY—ELECTIONS—TAXATION
STATE FINANCE AND CONTRACTS
RETIREMENT

Titles
10. Military Affairs and Disaster and Emergency Services
11 and 12. Reserved
13. Elections
14. Reserved
15. Taxation }
16. Alcohol and Tobacco } Finances
17. State Finance }
18. Public Contracts
19. Public Retirement Systems

Volume 4

EDUCATION—LIBRARIES
RECREATION—CIVIL PROCEDURE
LEGAL RELATIONSHIPS

Titles
20. Education
21. Reserved
22. Libraries, Arts, and Antiquities
23. Parks, Recreation, Sports, and Gambling
24. Reserved
25. Civil Procedure
26. Evidence
27. Civil Liability, Remedies, and Limitations
28. Contracts and Other Obligations
29. Reserved

Volume 5

TRADE AND COMMERCE
FINANCE AND CREDIT
INSURANCE—CORPORATIONS

Titles
30. Trade and Commerce
31. Credit Transactions and Relationships
32. Financial Institutions
33. Insurance and Insurance Companies
34. Reserved
35. Corporations, Partnerships, and Associations

Volume 6

PROFESSIONS—LABOR
FAMILY—CRIME—HUMAN RIGHTS

Titles
36. Reserved
37. Professions and Occupations
38. Reserved
39. Labor
40. Family Law
41. Minors
42 and 43. Reserved
44. Law Enforcement
45. Crimes
46. Criminal Procedure
47 and 48. Reserved
49. Human Rights

Volume 7

HEALTH—SOCIAL SERVICES
TRANSPORTATION—UTILITIES

Titles
50. Health and Safety
51 and 52. Reserved
53. Social Services and Institutions
54-59. Reserved
60. Highways and Transportation
61. Motor Vehicles
62-66. Reserved
67. Aeronautics
68. Reserved
69. Public Utilities and Carriers

Volume 8

PROPERTY—ESTATES
ENVIRONMENT—LANDS

Titles
70. Property
71. Mortgages, Pledges, and Liens
72. Estates, Trusts, and Fiduciary Relationships
73 and 74. Reserved
75. Environmental Protection
76. Land Resources and Use
77. State Lands
78 and 79. Reserved

Volume 9

AGRICULTURE—LIVESTOCK
MINERALS—WATER
FISH AND GAME
PLANNING AND DEVELOPMENT

Titles
80. Agriculture
81. Livestock
82. Minerals, Oil, and Gas
83 and 84. Reserved
85. Water Use
86. Reserved
87. Fish and Wildlife
88 and 89. Reserved
90. Planning, Research, and Development
91-99. Reserved

INDEX

TITLE 36

RESERVED

TITLE 37

PROFESSIONS AND OCCUPATIONS

Ch.
1. General Provisions.
2. General Provisions Relating to Health Care Practitioners.
3. Medicine.
4. Dentistry and Dental Hygiene.
5. Osteopathy.
6. Podiatry.
7. Pharmacy.
8. Nursing.
9. Nursing Home Administrators.
10. Optometry.
11. Physical Therapy.
12. Chiropractic.
13. Acupuncture Practice Act.
14. Radiologic Technologists.
15. Speech Pathologists and Audiologists.
16. Hearing Aid Dispensers.
17. Psychologists.
18. Veterinary Medicine.
19. Morticians and Funeral Directors.
20. Physicians' Assistants.
21. Dietitians.
22. Social Work.
23. Professional Counseling.
24. Occupational Therapy.
Chapters 25 through 28 reserved.
29. Denturitry.
30. Barbers.
31. Cosmetology.
32. Electrology.
33. Massage Therapy. Repealed. Sec. 7, Ch. 84, L. 1983.
Chapters 34 through 39 reserved.
40. Sanitarians.
41. Cesspool, Septic Tank, and Privy Cleaners.
42. Water Treatment Plant Operators.
43. Water Well Contractors.
Chapters 44 through 49 reserved.
50. Public Accountants.
51. Real Estate Brokers and Salesmen.
52. Title Abstracters. Repealed. Sec. 195, Ch. 575, L. 1981.
Chapters 53 through 59 reserved.
60. Private Investigators and Patrolmen.
61. Attorneys at Law.
62. Polygraph Examiners.
Chapters 63 and 64 reserved.
65. Architecture.
66. Landscape Architecture.
67. Engineers and Land Surveyors.
68. Electricians and Electrical Safety.
69. Plumbers.
70. Heating, Ventilation, Air Conditioning. Repealed. Sec. 195, Ch. 575, L. 1981.
71. Public Contractors.
72. Construction Blasting.

Title Cross-References

Licensing of athletics, boxing and wrestling matches, Title 23, ch. 3.

Licensing of horseracing, Title 23, ch. 4.

Licensing and registration of insurance agents, solicitors, adjusters, consultants, and administrators, Title 33, ch. 17.

CHAPTER 1

GENERAL PROVISIONS

Part 1 — Duties and Authority of Department, Director, and Boards

Section
37-1-101. Duties of department.
37-1-102. Renumbered 37-1-121 by Code Commissioner, 1981.
37-1-103. Renumbered 37-1-131 by Code Commissioner, 1981.
37-1-104. Standardized forms.
37-1-105. Reporting disciplinary actions against licensees.
37-1-106. Biennial report to governor and legislature.
37-1-107 through 37-1-120 reserved.
37-1-121. Duties of director.
37-1-122 through 37-1-129 reserved.
37-1-130. Definition.
37-1-131. Duties of boards.
37-1-132. Nominees for appointment to licensing and regulatory boards.
37-1-133. Board members' compensation and expenses.
37-1-134. Licensing boards to establish fees commensurate with costs.
37-1-135. Licensing investigation and review — record access.
37-1-136. Disciplinary authority of boards — injunctions.
37-1-137. Grounds for disciplinary action as grounds for license denial — conditions to new licenses.
37-1-138 through 37-1-140 reserved.
37-1-141. Nonrenewal of license for three years — termination.

Part 2 — Licensure of Criminal Offenders

37-1-201. Purpose.
37-1-202. Intent and policy.
37-1-203. Conviction not a sole basis for denial.
37-1-204. Statement of reasons for denial.
37-1-205. Licensure on completion of supervision.

Chapter Cross-References

Horseracing, Title 23, ch. 4.

Gambling, Title 23, ch. 5.

Licensing of savings and loan agents, 32-2-409.

Licensing of outfitters and guides, Title 87, ch. 4.

Part 1

Duties and Authority of Department, Director, and Boards

Part Cross-References

Department and boards created, Title 2, ch. 15, part 18.

37-1-101. Duties of department. In addition to the provisions of 2-15-121, the department of commerce shall:

(1) provide all the administrative and clerical services needed by the boards within the department, including corresponding, taking applications for licenses, issuing licenses granted by the boards, renewing licenses, registering, taking minutes of board meetings and hearings, and filing;

(2) standardize and keep in Helena all official records of the boards;

(3) make arrangements and provide facilities in Helena for the meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;

(4) administer and grade examinations required by each board or by law for licensing, unless the board determines that experts or professionals are necessary to administer or grade a particular examination;

(5) at the request of a board, investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board within the department;

(6) assess the costs of the department to the boards on an equitable basis as determined by the department;

(7) adopt rules establishing expiration dates of licenses for barbers, barbershops, professional engineers, land surveyors, nursing home administrators, optometrists, plumbers, social workers, speech pathologists, audiologists, and radiologic technologists.

History: En. 82A-1603 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1603; amd. Sec. 1, Ch. 293, L. 1981; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 390, L. 1983; amd. Sec. 1, Ch. 307, L. 1985.

Compiler's Comments

1985 Amendment: In (7) after "plumbers", inserted "social workers, speech pathologists, audiologists".

1983 Amendment: Inserted (7).

1981 Amendments: Chapter 274 substituted "department of commerce" for "department of professional and occupational licensing" in the introductory clause.

Chapter 293 deleted "a pro rata basis according to the number of man-days and the actual operating costs of the department for each board" in (6); added "an equitable basis as determined by the department" to (6).

Cross-References

Allocation for administrative purposes only, 2-15-121.

Department's duties for Board of Horseracing, 23-4-103.

37-1-102. Renumbered 37-1-121 by Code Commissioner, 1981.

37-1-103. Renumbered 37-1-131 by Code Commissioner, 1981.

37-1-104. Standardized forms. It is the responsibility of the department whenever possible to adopt standardized application, license, and other forms used by the boards within the department. The standardization is to reduce costs, waste, and the use of out-of-date forms and facilitate automated printing and computerization.

History: En. Sec. 2, Ch. 293, L. 1981.

37-1-105. Reporting disciplinary actions against licensees. The department has the authority and shall require that all licensing boards within the department require all applicants for licensure or renewal to report any legal or disciplinary actions against them which relate to the propriety of the applicants' practice of or their fitness to practice the profession or occupation for which they seek licensure. Failure to furnish the required information or the filing of false information is grounds for denial or revocation of a license.

History: En. Sec. 3, Ch. 293, L. 1981.

Cross-References

Duty of boards to adopt rules on conduct, 37-1-131.

37-1-106. Biennial report to governor and legislature. The department, in cooperation with each licensing board, shall prepare a biennial report. The biennial report of the department shall contain for each board a summary of the board's activities, the board's goals and objectives, a detailed breakdown of board revenues and expenditures, statistics illustrating board activities concerning licensing, summary of complaints received and their disposition, number of licenses revoked or suspended, legislative or court action affecting the board, and any other information the department or board considers relevant.

History: En. Sec. 4, Ch. 293, L. 1981; amd. Sec. 10, Ch. 125, L. 1983.

Compiler's Comments

1983 Amendment: Near middle of section, before "The biennial report" deleted "In addition to the information prescribed by the governor under 2-7-102".

37-1-107 through 37-1-120 reserved.

37-1-121. Duties of director. In addition to his powers and duties under 2-15-112 and 2-15-121, the director of commerce shall:

(1) at the request of a party, appoint impartial legal counsel to conduct hearings before each board within the department whenever any board holds a contested case hearing. The legal counsel appointed shall see that hearings are conducted in a proper and legal manner.

(2) whenever the department conducts an investigation of a complaint of illegal or unethical conduct of a member of a particular profession or occupation as prescribed in 37-1-101(5) and if requested by the appropriate board, appoint an impartial member of that profession or occupation to assist the department in its investigation. The member so appointed may not be a member of the board having jurisdiction over the particular profession or occupation.

(3) hire all personnel to perform the administrative and clerical functions of the department for the boards. Boards within the department have no authority to hire personnel.

(4) approve all contracts and expenditures by boards within the department. No board within the department may enter into a contract or expend funds without the approval of the director.

History: En. 82A-1604 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 14, Ch. 533, L. 1977; R.C.M. 1947, 82A-1604; amd. Sec. 3, Ch. 274, L. 1981; Sec. 37-1-102, MCA 1979; redes. 37-1-121 by Code Commissioner, 1981; amd. Sec. 1, Ch. 165, L. 1985.

Compiler's Comments

1985 Amendment: At beginning of (1) inserted "at the request of a party" and near end of first sentence of (1), before "hearing", inserted "contested case".

1981 Amendment: Substituted "director of commerce" for "director of professional and occupational licensing" in the introductory clause.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

Appointment and qualifications of department heads, 2-15-111.

Duties and powers of department heads, 2-15-112.

37-1-122 through 37-1-129 reserved.

37-1-130. Definition. As used in this part, "board" means each board in this title that regulates a profession or occupation and that is allocated to the department of commerce.

History: En. Sec. 5, Ch. 274, L. 1981.

37-1-131. Duties of boards. Each board within the department shall:

(1) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within its jurisdiction;

(2) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within its jurisdiction. The hearings shall be conducted by legal counsel when required under 37-1-121(1).

(3) pay to the department its pro rata share of the assessed costs of the department under 37-1-101(6).

History: En. 82A-1605 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 11, Ch. 250, L. 1973; R.C.M. 1947, 82A-1605(1) thru (3); amd. Sec. 3, Ch. 274, L. 1981; Sec. 37-1-103, MCA 1979; redes. 37-1-131 by Code Commissioner, 1981; amd. Sec. 2, Ch. 165, L. 1985.

Compiler's Comments

1985 Amendment: Near end of (2) after "counsel", substituted "when required" for "appointed".

Cross-References

"Rules" defined, 2-4-102.

Contested case as including licensing, 2-4-102, 2-4-631.

Allocation for administrative purposes only, 2-15-121.

37-1-132. Nominees for appointment to licensing and regulatory boards. Private associations and members of the public may submit to the governor lists of nominees for appointment to professional and occupational licensing and regulatory boards. The governor may consider nominees from the lists when making appointments to such boards.

History: En. Sec. 9, Ch. 244, L. 1981.

37-1-133. Board members' compensation and expenses. Unless otherwise provided by law, each member of a board allocated to the department is entitled to receive $50 per day compensation and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day spent on official board business. Board members who conduct official board business in their city of residence are entitled to receive a midday meal allowance, as provided for in 2-18-502. Ex officio board members may not receive compensation but shall receive travel expenses.

History: En. Sec. 1, Ch. 474, L. 1981; amd. Sec. 2, Ch. 123, L. 1983; amd. Sec. 4, Ch. 672, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 123 substituted, at end of second sentence, "2-18-502" for "2-18-501, for each day in which 6 or more hours are spent on official board business".

Chapter 672 increased per diem from $25 to $50.

37-1-134. Licensing boards to establish fees commensurate with costs. All licensing boards allocated to the department shall set fees reasonably related to the respective program area costs. Unless otherwise provided by law, each board within the department may establish fees including but not limited to fees for program areas such as application, examination, renewal, reciprocity, late renewal, and continuing education. Board costs not related to a specific program area may be equitably distributed to program areas as determined by the board. Each board shall maintain records sufficient to support the fees charged for each program area.

History: En. Sec. 1, Ch. 345, L. 1981.

37-1-135. Licensing investigation and review — record access. Any person, firm, corporation, or association that performs background reviews, complaint investigations, or peer reviews pursuant to an agreement or contract with a state professional or occupational licensing board shall make available to the board and the legislative auditor, upon request, any and all records or other information gathered or compiled during the course of the background review, complaint investigation, or peer review.

History: En. Sec. 1, Ch. 242, L. 1981.

37-1-136. Disciplinary authority of boards — injunctions. (1) Each licensing board allocated to the department has the authority, in addition to any other penalty or disciplinary action provided by law, to adopt rules specifying grounds for disciplinary action and rules providing for:

(a) revocation of a license;

(b) suspension of its judgment of revocation on terms and conditions determined by the board;

(c) suspension of the right to practice for a period not exceeding 1 year;

(d) placing a licensee on probation;

(e) reprimand or censure of a licensee; or

(f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by a board shall be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(3) Notwithstanding any other provision of law, a board may maintain an action to enjoin a person from engaging in the practice of the occupation or profession regulated by the board until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

History: En. Sec. 1, Ch. 246, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Contested case procedure, Title 2, ch. 4, part 6.

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

37-1-137. Grounds for disciplinary action as grounds for license denial — conditions to new licenses. (1) Unless otherwise provided by law, grounds for disciplinary action by a board allocated to the department of commerce against a holder of an occupational or professional license may be, under appropriate circumstances, grounds for either issuance of a probationary license for a period not to exceed 1 year or denial of a license to an applicant.

(2) The denial of a license or the issuance of a probationary license under subsection (1) must be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 1, Ch. 273, L. 1985.

37-1-138 through 37-1-140 reserved.

37-1-141. Nonrenewal of license for three years — termination. Unless otherwise provided by statute or rule, a lapsed occupational or professional license that is not renewed within 3 years of the most recent renewal date automatically terminates. The terminated license may not be reinstated, and a new original license must be obtained by passing a qualifying examination and paying the appropriate fee.

History: En. Sec. 1, Ch. 272, L. 1985.

Part 2

Licensure of Criminal Offenders

Part Cross-References

Rights of convicted, Art. II, sec. 28, Mont. Const.

No horseracing license issued to criminal offender, 23-4-201.

No gambling license issued to criminal offender, 23-5-322, 23-5-422.

No building and loan agent's license issued to criminal offender, 32-2-409.

Effect of conviction, 46-18-801.

No outfitter's license issued to criminal offender, 87-4-122.

37-1-201. Purpose. It is the public policy of the legislature of the state of Montana to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the assumption of the responsibilities of citizenship. The legislature finds that the public is best protected when such offenders are given the opportunity to secure employment or to engage in a meaningful occupation, while licensure must be conferred with prudence to protect the interests of the public.

History: En. 66-4001 by Sec. 1, Ch. 490, L. 1975; R.C.M. 1947, 66-4001.

37-1-202. Intent and policy. It is the intent of the legislature and the declared policy of the state that occupational licensure be granted or revoked as a police power of the state in its protection of the public health, safety, and welfare.

History: En. 66-4002 by Sec. 2, Ch. 490, L. 1975; R.C.M. 1947, 66-4002.

37-1-203. Conviction not a sole basis for denial. Criminal convictions shall not operate as an automatic bar to being licensed to enter any occupation in the state of Montana. No licensing authority shall refuse to license a person solely on the basis of a previous criminal conviction; provided, however, where a license applicant has been convicted of a criminal offense and such criminal offense relates to the public health, welfare, and safety as it applies to the occupation for which the license is sought, the licensing agency may, after investigation, find that the applicant so convicted has not been sufficiently rehabilitated as to warrant the public trust and deny the issuance of a license.

History: En. 66-4003 by Sec. 3, Ch. 490, L. 1975; R.C.M. 1947, 66-4003.

37-1-204. Statement of reasons for denial. When a licensing agency prohibits an applicant from being licensed wholly or partially on the basis of a criminal conviction, the agency shall state explicitly in writing the reasons for the decision.

History: En. 66-4004 by Sec. 4, Ch. 490, L. 1975; R.C.M. 1947, 66-4004.

Cross-References

Findings of fact required, 2-4-623.

Application of contested case procedure to licensing, 2-4-631.

37-1-205. Licensure on completion of supervision. Completion of probation or parole supervision without any subsequent criminal conviction shall be evidence of rehabilitation; provided, however, that the facts surrounding the situation that led to the probation or parole supervision may be considered as they relate to the occupation for which a license is sought and provided that nothing herein shall be construed to prohibit licensure of a person while he is under state supervision if the licensing agency finds insufficient evidence to preclude such licensure.

History: En. 66-4005 by Sec. 5, Ch. 490, L. 1975; R.C.M. 1947, 66-4005.

Cross-References

Supervision of probationers and parolees, Title 46, ch. 23, part 10.

CHAPTER 2

GENERAL PROVISIONS RELATING TO HEALTH CARE PRACTITIONERS

Part 1 — Dispensing of Drugs

Section
37-2-101. Definitions.
37-2-102. Practices declared unlawful between drug companies and medical practitioners.
37-2-103. Practices declared unlawful between medical practitioners and pharmacies.
37-2-104. Dispensing of drugs by medical practitioners unlawful — exceptions.
37-2-105. Duty of county attorneys.
37-2-106. Existing ownership of pharmacy.
37-2-107 through 37-2-110 reserved.
37-2-111. Duty to report prescriptions issued to drug addicts.

Part 2 — Nonliability for Peer Review

37-2-201. Nonliability for peer review — evidential privilege — application to nonprofit corporations.

Part 3 — Miscellaneous Provisions

37-2-301. Duty to report cases of communicable disease.
37-2-302. Gunshot or stab wounds to be reported.
37-2-303. Immunity from liability.

37-2-304 through 37-2-310 reserved.
37-2-311. Report to department of justice by physician.
37-2-312. Physician's immunity from liability.

Part 1

Dispensing of Drugs

Part Cross-References
Pharmacy, Title 37, ch. 7.
Dangerous drugs, Title 45, ch. 9.
Model Drug Paraphernalia Act, Title 45, ch. 10.
Controlled substances, Title 50, ch. 32.

37-2-101. Definitions. As used in this part, the following definitions apply:

(1) "Medical practitioner" means any person licensed by the state of Montana to engage in the practice of medicine, dentistry, osteopathy, or chiropody (podiatry) and in such practice to administer or prescribe drugs.

(2) "Drug" means any article:

(a) recognized in the official United States Pharmacopoeia/National Formulary or in any supplement to such pharmacopoeia/formulary;

(b) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(c) intended to affect the structure or any function of the body of man;

(d) intended for use as a component of any article described in subsection (a), (b), or (c) of this subsection (2), but such term does not include any device or any components of a device.

(3) "Device" means any instrument, apparatus, or contrivance intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(b) to affect the structure or any function of the body of man.

(4) "Pharmacy" means an establishment which engages in the sale of drugs requiring a prescription.

(5) "Community pharmacy", when used in relation to a medical practitioner, means a pharmacy situated within 10 miles of any place at which such medical practitioner maintains an office for professional practice.

(6) "Drug company" means any person engaged in the manufacturing, processing, packaging, or distribution of drugs; but such term does not include a pharmacy.

(7) "Person" means any individual and any partnership, firm, corporation, association, or other business entity.

(8) "State" means the state of Montana or any political subdivision thereof.

History: En. Sec. 1, Ch. 311, L. 1971; R.C.M. 1947, 27-901; amd. Sec. 2, Ch. 379, L. 1981.

Compiler's Comments
1981 Amendment: Deleted "the official" after "Pharmacopoeia" in subsection (2)(a); deleted "office, pharmacy, drugstore, or other" from the definition of pharmacy in subsection (4); substituted "requiring a prescription" for "at retail" in subsection (4).

37-2-102. Practices declared unlawful between drug companies and medical practitioners. It shall be unlawful:

(1) for a drug company to give or sell to a medical practitioner any legal or beneficial interest in the company or in the income thereof with the intent or for the purpose of inducing such medical practitioner to prescribe to his patients the drugs of the company. The giving or selling of such interest by the company to a medical practitioner without such interest first having been publicly offered to the general public shall be prima facie evidence of such intent or purpose.

(2) for a medical practitioner to acquire or own a legal or beneficial interest in any drug company, provided it shall not be unlawful for a medical practitioner to acquire or own such an interest solely for investment; and the acquisition of an interest which is publicly offered to the general public shall be prima facie evidence of its acquisition solely for investment;

(3) for a medical practitioner to solicit or to knowingly receive from a drug company or for a drug company to pay or to promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon the volume of wholesale or retail sales, at any place, of drugs manufactured, processed, packaged, or distributed by the company.

History: **En. Sec. 2, Ch. 311, L. 1971; R.C.M. 1947, 27-902.**

37-2-103. Practices declared unlawful between medical practitioners and pharmacies. (1) It shall be unlawful for a medical practitioner to own, directly or indirectly, a community pharmacy. Nothing in this subsection shall prohibit a medical practitioner from dispensing a drug which he is permitted to dispense under 37-2-104.

(2) It shall be unlawful for a medical practitioner directly or indirectly to solicit or to knowingly receive from a community pharmacy or for a community pharmacy knowingly to pay or promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon income received or resulting from the sale or furnishing by such community pharmacy of drugs to patients of any medical practitioner.

History: **En. Sec. 4, Ch. 311, L. 1971; R.C.M. 1947, 27-904.**

37-2-104. Dispensing of drugs by medical practitioners unlawful — exceptions. (1) Except as otherwise provided by this section, it is unlawful for a medical practitioner to engage, directly or indirectly, in the dispensing of drugs.

(2) Nothing in this section prohibits:

(a) a medical practitioner from furnishing a patient any drug in an emergency;

(b) the administration of a unit dose of a drug to a patient by or under the supervision of such medical practitioner;

(c) dispensing a drug to a patient by a medical practitioner whenever there is no community pharmacy available to the patient;

(d) the dispensing of drugs occasionally, but not as a usual course of doing business, by a medical practitioner;

(e) a medical practitioner from dispensing drug samples.

History: **En. Sec. 3, Ch. 311, L. 1971; R.C.M. 1947, 27-903; amd. Sec. 1, Ch. 22, L. 1979.**

37-2-105. Duty of county attorneys. It shall be the duty of the county attorneys in the counties of the state, under the direction of the attorney general, to institute appropriate proceedings to prevent and restrain such violations. Such proceedings may be by way of complaint setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. Upon the filing of a complaint under this section and the service thereof upon the defendants named therein, the court shall proceed as soon as possible to the hearing and determination of the action.

History: En. Sec. 5, Ch. 311, L. 1971; R.C.M. 1947, 27-905.

Cross-References

Duty of Attorney General to supervise County Attorneys, 2-15-501.

Duties of County Attorneys generally, Title 7, ch. 4, part 27.

37-2-106. Existing ownership of pharmacy. The provisions of 37-2-103(1) shall not apply to a medical practitioner as to any interest which he owns as set forth in said subsection on July 1, 1971, provided that transfer of this interest to another person shall result in immediate termination of such exemption.

History: En. Sec. 6, Ch. 311, L. 1971; R.C.M. 1947, 27-906.

Cross-References

Store license for pharmacy, 37-7-321.

37-2-107 through 37-2-110 reserved.

37-2-111. Duty to report prescriptions issued to drug addicts. (1) A physician duly licensed to practice medicine in Montana who prescribes for or dispenses, administers, or in any manner gives opium or coca leaves or any of their derivatives, salts, preparations, or compounds to a person known to him or believed by him to be an habitual user or a drug addict shall, within 48 hours, report the name, address, physical and mental condition, and any necessary substantial information regarding such person to the county attorney of the county in which that physician prescribes, dispenses, administers, or in any manner gives any of the drugs mentioned in this section.

(2) An "habitual user of drugs" or "drug addict" is defined as follows: a person who has needed or demanded the prescribing, dispensing, or administering or in any manner the giving of opium or coca leaves or any of their derivatives, salts, preparations, or compounds at more or less regular intervals for 30 consecutive days prior to the day that person applies to a physician for the prescribing, dispensing, administering, or the giving in any way of any such drugs or their derivatives.

(3) If a physician prescribes for or dispenses, administers, or in any manner gives any of the drugs mentioned in this section daily for more than 30 days to a person, that physician shall register with the county attorney the name of such person, together with a statement of the physical and mental condition of such person and a prognosis as to the probable future necessity for continuing to prescribe for, dispense, administer, or give such drugs to such person, and the prognosis shall include an estimate as to the length of time which, according to the judgment of the physician, will be required to remove the necessity of administering the aforesaid narcotic drugs to such person.

(4) The county attorney shall, upon receipt of such notice, immediately file a complaint against such habitual user of drugs or drug addict in the district court of his county.

(5) A person violating any of the provisions of this section is guilty of a misdemeanor and upon conviction for each violation shall be sentenced to a term of imprisonment not to exceed 6 months in the county jail, a fine not to exceed $500, or both.

History: **En. Sec. 6, Ch. 202, L. 1921; re-en. Sec. 3194, R.C.M. 1921; re-en. Sec. 3194, R.C.M. 1935; amd. Sec. 8, Ch. 101, L. 1977; R.C.M. 1947, 66-1516.**

Cross-References

Duties of County Attorneys generally, Title 7, ch. 4, part 27.

Part 2

Nonliability for Peer Review

Part Cross-References

Licensing investigation and review — record access, 37-1-135.

Health care information, Title 50, ch. 16.

37-2-201. Nonliability for peer review — evidential privilege — application to nonprofit corporations. (1) No member of a utilization review committee of a hospital or long-term care facility or of a professional utilization committee, peer review committee, or professional standards review committee of a society composed of persons licensed to practice a health care profession is liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to him after reasonable effort to obtain the facts of the matter for which the action is taken or a recommendation is made.

(2) The proceedings and records of professional utilization, peer review, and professional standards review committees are not subject to discovery or introduction into evidence in any proceeding. However, information otherwise discoverable or admissible from an original source is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before the committee, nor is a member of the committee or other person appearing before it to be prevented from testifying as to matters within his knowledge, but he cannot be questioned about his testimony or other proceedings before the committee or about opinions or other actions of the committee or any member thereof.

(3) This section also applies to any member, agent, or employee of a nonprofit corporation engaged in performing the functions of a peer review or professional standards review committee.

History: **En. 66-1052 by Sec. 1, Ch. 226, L. 1975; amd. Sec. 1, Ch. 267, L. 1977; R.C.M. 1947, 66-1052; amd. Sec. 2, Ch. 22, L. 1979.**

Cross-References

Medical legal panel created, 27-6-104.

Reporting obligations of physicians, Title 37, ch. 3, part 4.

Part 3

Miscellaneous Provisions

37-2-301. Duty to report cases of communicable disease. (1) If a physician or other practitioner of the healing arts examines or treats a person whom he believes has a communicable disease or a disease declared reportable by the department of health and environmental sciences, he shall immediately report the case to the local health officer. The report shall be in the form and contain information prescribed by the department.

(2) A person who violates the provisions of this section or rules adopted by the department under the provisions of this section is guilty of a misdemeanor. On conviction, he shall be fined not less than $10 or more than $500, imprisoned for not more than 90 days, or both. Each day of violation constitutes a separate offense. Fines shall be paid to the county treasurer of the county in which the violation occurs.

History: (1)En. Sec. 91, Ch. 197, L. 1967; Sec. 69-4514, R.C.M. 1947; (2)En. Sec. 96, Ch. 197, L. 1967; amd. Sec. 108, Ch. 349, L. 1974; amd. Sec. 3, Ch. 273, L. 1975; Sec. 69-4519, R.C.M. 1947; R.C.M. 1947, 69-4514, 69-4519(part).

Cross-References

Communicable diseases defined, 50-1-101.

Powers of Department relating to communicable diseases, 50-1-202.

37-2-302. Gunshot or stab wounds to be reported. The physician, nurse, or other person licensed to practice a health care profession treating the victim of a gunshot wound or stabbing shall make a report to a law enforcement officer by the fastest possible means. Within 24 hours after initial treatment or first observation of the wound, a written report shall be submitted, including the name and address of the victim, if known, and shall be sent by regular mail.

History: En. 66-1050 by Sec. 1, Ch. 303, L. 1974; R.C.M. 1947, 66-1050.

37-2-303. Immunity from liability. A physician or other person reporting pursuant to 37-2-302 shall be presumed to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, unless he acted in bad faith or with malicious purpose.

History: En. 66-1051 by Sec. 2, Ch. 303, L. 1974; R.C.M. 1947, 66-1051.

Cross-References

Libel and slander, Title 27, ch. 1, part 8.

37-2-304 through 37-2-310 reserved.

37-2-311. Report to department of justice by physician. (1) Any physician who diagnoses a physical or mental condition that, in the physician's judgment, will significantly impair a person's ability to safely operate a motor vehicle may voluntarily report the person's name and other information relevant to his condition to the department of justice. The department, upon receiving the report, shall require the person so reported to be examined in the manner provided for in 61-5-110 and 61-5-207.

(2) (a) The physician's report may be introduced as evidence in any proceeding involving the granting, suspension, or revocation of the person's driver's license before the department or a court.

(b) The physician's report may not be utilized in a criminal proceeding or in a civil proceeding, other than as provided in this subsection, without the consent of the patient.

History: **En. Sec. 1, Ch. 126, L. 1983.**

Compiler's Comments

Code Commissioner Correction: The Code Commissioner has substituted the department of justice for the division of motor vehicles in this section, because sec. 14, Ch. 503, L. 1985, repealed 2-15-2002, which had statutorily created the division, and sec. 1, Ch. 503 amended Title 61, Motor Vehicles, to substitute "department" for "division" throughout that title. The apparent intent was to eliminate the statutory status of the division, and therefore the Code Commissioner has changed statutory references accordingly (see 1-11-101(2)(g)).

Cross-References

Doctor-patient privilege, 26-1-805.

Revocation, suspension, or cancellation of driver's licenses, Title 61, ch. 5, part 2.

37-2-312. Physician's immunity from liability. Any physician reporting in good faith is immune from any liability, civil or criminal, that otherwise might result by reason of his actions pursuant to 37-2-311 except for damages occasioned by gross negligence. No action may be brought against a physician for not making a report pursuant to 37-2-311.

History: **En. Sec. 2, Ch. 126, L. 1983.**

Cross-References

Libel and slander, Title 27, ch. 1, part 8.

CHAPTER 3

MEDICINE

Part 1 — General

Section

37-3-101. Purpose.
37-3-102. Definitions.
37-3-103. Exemptions from licensing requirements.

Part 2 — Board of Medical Examiners

37-3-201. Organization.
37-3-202. Policy.
37-3-203. Powers and duties.
37-3-204. Meetings.
37-3-205. Records.
37-3-206. Compensation and expenses of members.

Part 3 — Licensing

37-3-301. License required — kinds of certificates.
37-3-302. Certificate to specify practice permitted.
37-3-303. Practice authorized by physician's certificate.
37-3-304. Practice authorized by temporary certificate.
37-3-305. Qualifications for licensure.
37-3-306. Physician's certificate — examination — reciprocity and endorsement.
37-3-307. Qualifications for licensure — temporary certificate.
37-3-308. Examination and application fees — further tax forbidden.
37-3-309. Application for license.
37-3-310. Notice of change of address or name — applicants — licensees.
37-3-311. Examination.
37-3-312. Issuance of license.

37-3-313. Annual registration fees — failure to pay — limiting authority to impose registration fees.
37-3-314. Deposit of money received.
37-3-315 through 37-3-320 reserved.
37-3-321. Refusal of license.
37-3-322. Unprofessional conduct.
37-3-323. Revocation or suspension of license — probation.
37-3-324. Reconsideration and review of actions of board.
37-3-325. Violations — penalties.
37-3-326. Injunctive relief — manner of charging violation.
37-3-327. Subpoena — fees.
37-3-328. Failure to appear or testify.

Part 4 — Reporting Obligations

37-3-401. Report of incompetence or unprofessional conduct.
37-3-402. Insurer to report to board.
37-3-403. Report of prohibition or limitation on practice by hospital.
37-3-404. Immunity of person providing information.
37-3-405. Suspension of license or privilege for failure to report.

Chapter Cross-References

Doctor-patient privilege, 26-1-805.

Limits on liability for emergency care rendered at scene of accident or emergency, 27-1-714.

Montana Medical Legal Panel Act, Title 27, ch. 6.

Professional service corporations, Title 35, ch. 4.

General provisions relating to health care practitioners, Title 37, ch. 2.

Limitations on dentistry and oral surgery practices involving general anesthesia, 37-4-511.

Regulation of prescriptions, Title 37, ch. 7, part 4.

Optometry laws not applicable to physicians and surgeons, 37-10-102.

Physicians' assistants, Title 37, ch. 20.

Validity of consent to medical treatment, Title 41, ch. 1, part 4.

Physicians to report child abuse, 41-3-201.

Sale and advertisement of contraceptive drugs and devices, 45-8-204.

Hospitals and related facilities, Title 50, ch. 5.

Family practice residency training, Title 50, ch. 5, part 6.

Emergency medical services, Title 50, ch. 6.

Health care information, Title 50, ch. 16.

Montana Abortion Control Act, Title 50, ch. 20.

Part 1

General

Part Cross-References

Duty of physician, resident, and intern to report violation of Montana Elder Abuse Prevention Act, 53-5-511.

37-3-101. Purpose. It is hereby declared, as a matter of legislative policy in the state of Montana, that the practice of medicine within the state of Montana is a privilege granted by the legislative authority and is not a natural right of individuals and that it is deemed necessary, as a matter of such policy and in the interests of the health, happiness, safety, and welfare of the people of Montana, to provide laws and provisions covering the granting of that privilege and its subsequent use, control, and regulation to the end that the public shall be properly protected against unprofessional, improper, unauthorized, and unqualified practice of medicine and to license competent physicians to practice medicine and thereby provide for the health needs of the people of Montana.

History: **En. Sec. 2, Ch. 338, L. 1969; R.C.M. 1947, 66-1011.**

37-3-102. Definitions. (1) Unless the context requires otherwise, in this chapter the following definitions apply:

(a) "Practice of medicine" means the diagnosis, treatment, or correction of or the attempt to or the holding of oneself out as being able to diagnose, treat, or correct human conditions, ailments, diseases, injuries, or infirmities, whether physical or mental, by any means, methods, devices, or instrumentalities. If a person who does not possess a license to practice medicine in this state under this chapter and who is not exempt from the licensing requirements of this chapter performs acts constituting the practice of medicine, he is practicing medicine in violation of this chapter.

(b) "Board" means the Montana state board of medical examiners provided for in 2-15-1841.

(c) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(2) An "approved medical school" is a school which either is accredited by the American osteopathic association or conforms to the minimum education standards established by the council on medical education of the American medical association or successors for medical schools or is equivalent in the sound discretion of the board. The board may, on investigation of the education standards and facilities, approve any medical school, including foreign medical schools.

(3) An "approved internship" is an internship training program of at least 1 year in a hospital which is either approved for intern training by the American osteopathic association or conforms to the minimum standards for intern training established by the council on medical education of the American medical association or successors. However, the board shall have the authority, upon investigation, to approve any other internship.

(4) An "approved residency" is a residency training program in a hospital conforming to the minimum standards for residency training established by the council on medical education of the American medical association or successors or approved for residency training by the American osteopathic association. However, the board shall have the authority upon investigation to approve any other residency.

History: (1)En. Sec. 3, Ch. 338, L. 1969; amd. Sec. 1, Ch. 203, L. 1971; amd. Sec. 1, Ch. 97, L. 1974; amd. Sec. 91, Ch. 350, L. 1974; Sec. 66-1012, R.C.M. 1947; (2)En. Sec. 19, Ch. 338, L. 1969; amd. Sec. 5, Ch. 203, L. 1971; amd. Sec. 102, Ch. 350, L. 1974; Sec. 66-1028, R.C.M. 1947; (3)En. Sec. 20, Ch. 338, L. 1969; amd. Sec. 6, Ch. 203, L. 1971; Sec. 66-1029, R.C.M. 1947; (4)En. Sec. 21, Ch. 338, L. 1969; amd. Sec. 7, Ch. 203, L. 1971; Sec. 66-1030, R.C.M. 1947; R.C.M. 1947, 66-1012(1), 66-1028, 66-1029, 66-1030(part); amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (1)(c); changed internal references to the department and the board.

37-3-103. Exemptions from licensing requirements. (1) This chapter does not prohibit or require a license with respect to any of the following acts:

(a) the gratuitous rendering of services in cases of emergency or catastrophe;

(b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if he has any established or regularly used hospital connections in this state or maintains or is provided with, for his regular use, an office or other place for rendering the services, he must possess a license to practice medicine in this state.

(c) the practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) the practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) the practice of optometry under the conditions and limitations defined by the laws of this state;

(f) the practice of osteopathy under the conditions and limitations defined in chapter 5 of this title for those doctors of osteopathy who do not receive a physician's certificate under this chapter;

(g) the practice of chiropractic under the conditions and limitations defined by the laws of this state;

(h) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;

(i) the performance by commissioned medical officers of the armed forces of the United States, of the United States public health service, or of the United States veterans' administration of their lawful duties in this state as officers;

(j) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered nurse-midwives under the supervision of a licensed physician;

(k) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be licensed if he otherwise engages in the practice of medicine in the state of Montana.

(l) the rendering of services by a physical therapist, technician, or other paramedical specialist under the appropriate amount and type of supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist;

(m) the rendering of services by a physician's assistant in accordance with Title 37, chapter 20;

(n) the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, and not specifically designated, under the conditions and limitations defined by law; and

(o) the execution of a death sentence pursuant to 46-19-103.

(2) Licensees referred to in subsection (1) of this section who are licensed to practice a limited field of healing arts shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses and, with the exception of those licensees who hold a medical degree, may not use the title "M.D." or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed.

History: Ap. p. Sec. 3, Ch. 338, L. 1969; amd. Sec. 1, Ch. 203, L. 1971; amd. Sec. 1, Ch. 97, L. 1974; amd. Sec. 91, Ch. 350, L. 1974; Sec. 66-1012, R.C.M. 1947; Ap. p. Sec. 21, Ch. 338, L. 1969; amd. Sec. 7, Ch. 203, L. 1971; Sec. 66-1030, R.C.M. 1947; R.C.M. 1947, 66-1012(2), (3), 66-1030(part); amd. Sec. 7, Ch. 380, L. 1981; amd. Sec. 1, Ch. 411, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (1)(o).

1981 Amendment: Substituted "appropriate amount and type of supervision" for "personal and responsible direction and" as regards paramedical specialists and technicians in (1)(l); inserted subsection (1)(m); inserted "with the exception of those licensees who hold a medical degree" after "licenses and," near the middle of (2).

Cross-References

Dentistry and dental hygiene, Title 37, ch. 4.

Osteopathy, Title 37, ch. 5.

Podiatry, Title 37, ch. 6.

Nursing, Title 37, ch. 8.

Optometry, Title 37, ch. 10.

Physical therapy, Title 37, ch. 11.

Chiropractic, Title 37, ch. 12.

Part 2

Board of Medical Examiners

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1841.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

Power to regulate acupuncture, Title 37, ch. 13, part 2.

37-3-201. Organization. The board shall, at the first meeting each year, elect from among its members a president, vice-president, and secretary. The board shall adopt a seal in which appear the words "The Board of Medical Examiners of Montana" and the further words "Official Seal", and acts, rules, orders, certificates, and licenses shall be authenticated by the seal.

History: En. Sec. 6, Ch. 338, L. 1969; amd. Sec. 93, Ch. 350, L. 1974; R.C.M. 1947, 66-1015.

Cross-References

Seal defined, 1-4-201.

Manner of making a seal, 1-4-202.

37-3-202. Policy. The board shall maintain reasonable and continuing supervision and surveillance over all licensees under this chapter to ensure that such licensees maintain standards of conduct and exercise the privileges granted hereunder in the greatest public interest and to carry out the purposes and provisions of this chapter.

History: En. Sec. 7, Ch. 338, L. 1969; R.C.M. 1947, 66-1016.

37-3-203. Powers and duties. The board may:

(1) adopt rules necessary or proper to carry out parts 1 through 3 of this chapter; the rules shall be fair, impartial, and nondiscriminatory;

(2) hold hearings and take evidence in matters relating to the exercise and performance of the powers and duties vested in the board;

(3) aid the county attorneys of this state in the enforcement of parts 1 through 3 of this chapter and the prosecution of persons, firms, associations, or corporations charged with violations of parts 1 through 3 of this chapter.

History: En. Sec. 8, Ch. 338, L. 1969; amd. Sec. 94, Ch. 350, L. 1974; R.C.M. 1947, 66-1017; amd. Sec. 1, Ch. 83, L. 1981.

Compiler's Comments

1981 Amendment: Deleted former subsection (2) requiring board approval of department hiring and other matters.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Duties of boards, 37-1-131.

Approval of class for optometric use of drugs, 37-10-304.

Transfer of funds derived from licensure of physical therapists, 37-11-203.

37-3-204. Meetings. The board shall hold meetings for examinations and for other business properly before the board at least twice annually at times and places set by the board. The president of the board may call special meetings he considers advisable or necessary. Four members of the board constitute a quorum.

History: En. Sec. 9, Ch. 338, L. 1969; amd. Sec. 95, Ch. 350, L. 1974; R.C.M. 1947, 66-1018.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Duty of Department to provide facilities, 37-1-101.

Board members' compensation and expenses, 37-1-133.

Disrupting meeting as disorderly conduct, 45-8-101.

37-3-205. Records. The department shall keep a record of the board's proceedings and also records of applicants for certificates and a register of licenses. The register is prima facie evidence of the matters contained in it.

History: En. Sec. 10, Ch. 338, L. 1969; amd. Sec. 96, Ch. 350, L. 1974; R.C.M. 1947, 66-1019.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

Preservation of records, Title 22, ch. 3, part 2.

Duty of Department to keep records, 37-1-101.

Licensing investigation and review — access to records, 37-1-135.

37-3-206. Compensation and expenses of members. Each member of the board of medical examiners shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 11, Ch. 338, L. 1969; amd. Sec. 1, Ch. 165, L. 1974; amd. Sec. 97, Ch. 350, L. 1974; amd. Sec. 30, Ch. 439, L. 1975; R.C.M. 1947, 66-1020; amd. Sec. 7, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Substituted language after "shall receive" for "$25 per day compensation while traveling to and from board meetings and while attending board meetings and for each full day away from home while conducting board business, plus travel expenses as provided for in 2-18-501 through 2-18-503, while in the active and necessary discharge of his duties".

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-3-301. License required — kinds of certificates. (1) Prior to the issuance of a license, an applicant may not engage in the practice of medicine in this state.

(2) The department may issue two forms of certificates under the board's seal: the physician's certificate and the temporary certificate. The physician's certificate shall be signed by the president, but the temporary certificate may be signed by any board member. The board shall decide which certificate to issue. These certificates shall be designated as:

(a) physician's certificate, which is subject to annual registration;

(b) temporary certificate, which is subject to specifications and limitations imposed by the board.

History: (1)En. Sec. 25, Ch. 338, L. 1969; amd. Sec. 105, Ch. 350, L. 1974; Sec. 66-1034, R.C.M. 1947; (2)En. Sec. 12, Ch. 338, L. 1969; amd. Sec. 98, Ch. 350, L. 1974; Sec. 66-1021, R.C.M. 1947; R.C.M. 1947, 66-1021, 66-1034(part).

37-3-302. Certificate to specify practice permitted. The certificates issued shall state the extent and character of the practice that is permitted and shall be in the form prescribed by the board. Neither the privileges granted to nor the obligations imposed upon licensees may be altered except by legislative enactment or by action of the board duly authorized hereunder.

History: En. Sec. 13, Ch. 338, L. 1969; R.C.M. 1947, 66-1022.

37-3-303. Practice authorized by physician's certificate. The physician's certificate authorizes the holder to perform one or more of the acts embraced in 37-3-102(1)(a) in a manner reasonably consistent with his training, skill, and experience.

History: En. Sec. 14, Ch. 338, L. 1969; amd. Sec. 3, Ch. 203, L. 1971; R.C.M. 1947, 66-1023; amd. Sec. 1, Ch. 323, L. 1979.

37-3-304. Practice authorized by temporary certificate. The temporary certificate, which may be issued to any citizen or to an alien otherwise qualified for a physician's certificate and which may be issued for a period not to exceed 1 year, subject to renewal for additional periods of 1 year but not to exceed five such renewals, at the discretion of the board, authorizes the holder to perform one or more of the acts embraced in 37-3-102(1)(a) in a manner reasonably consistent with his training, skill, and experience, subject, nevertheless, to all specifications, conditions, and limitations imposed by the board.

History: En. Sec. 15, Ch. 338, L. 1969; R.C.M. 1947, 66-1024.

37-3-305. Qualifications for licensure. (1) No person may be granted a physician's certificate to practice medicine in this state unless he:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has completed an approved internship of at least 1 year or, in the opinion of the board, has had experience or training which is at least the equivalent of 1 year internship;

(d) has made a personal appearance before the board unless such appearance has been specifically waived by the board; and

(e) is able to communicate, in the opinion of the board, in the English language.

(2) The board may authorize the department to issue the license subject to terms of probation or other conditions or limitations set by the board or may refuse a license if the applicant has committed unprofessional conduct or is otherwise unqualified.

(3) No person may be granted a temporary license to practice medicine in this state unless he:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has completed an approved internship of at least 1 year or, in the opinion of the board, has had experience or training which is at least the equivalent of 1 year internship;

(d) has made a personal appearance before at least one member of the board; and

(e) is able, in the opinion of the board, to communicate in the English language.

History: En. Sec. 18, Ch. 338, L. 1969; amd. Sec. 3, Ch. 168, L. 1971; amd. Sec. 101, Ch. 350, L. 1974; amd. Sec. 1, Ch. 213, L. 1977; R.C.M. 1947, 66-1027(1), (2); amd. Sec. 2, Ch. 323, L. 1979.

Cross-References

Licensing investigation and review — record access, 37-1-135.

37-3-306. Physician's certificate — examination — reciprocity and endorsement. (1) The board may authorize the department to issue to an applicant a physician's certificate, certificate by reciprocity, or certificate by endorsement only on the basis of:

(a) passing an examination given and graded by the department, subject to 37-1-101;

(b) certification of record or other certificate of examination issued to or for the applicant by the national board of medical examiners or successors, by the federation licensing examination committee or successors, by the national board of examiners for osteopathic physicians and surgeons, incorporated, or by the medical council of Canada or successors if the applicant is a graduate of a Canadian medical school which has been approved by the medical council of Canada or successors, certifying that the applicant has passed an examination given by this board; or

(c) a valid, unsuspended, and unrevoked license or certificate issued to the applicant on the basis of an examination by an examining board under the laws of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were, in the judgment of the board, essentially equivalent to those of this state for granting a license to practice medicine, if under the scope of the license or certificate the applicant was authorized to practice medicine in the other state, territory, or country.

(2) No applicant who applies for a license on the basis of an examination and fails the examination may be granted a license based on credentials from another state, territory, or foreign country or on a certificate issued by the national board of medical examiners or successors, by the federation licensing examination committee or successors, or by the medical council of Canada or successors.

(3) The board may adopt reciprocity or endorsement requirements current with changes in standards in the practice of medicine.

(4) The board may, in the case of an applicant for admission by reciprocity or endorsement, require a written or oral examination of the applicant.

(5) The board may require that graduates of foreign medical schools pass an examination given by the education council for foreign medical graduates or successors.

(6) Holders of the degree of doctor of osteopathy granted in 1955 or before will be certified only on the basis of taking and passing the examination given by the department, subject to 37-1-101. Holders of the degree of doctor of osteopathy granted after 1955 will be certified in the same manner as provided above for physicians.

History: **En. Sec. 16, Ch. 338, L. 1969; amd. Sec. 4, Ch. 203, L. 1971; amd. Sec. 1, Ch. 403, L. 1973; amd. Sec. 2, Ch. 166, L. 1974; amd. Sec. 99, Ch. 350, L. 1974; R.C.M. 1947, 66-1025; amd. Sec. 1, Ch. 438, L. 1979.**

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing of doctors of osteopathy, Title 37, ch. 5, part 3.

37-3-307. Qualifications for licensure — temporary certificate. (1) The board may authorize the department to issue to an applicant a temporary certificate to practice medicine on the basis of:

(a) passing an examination given and graded by the department, subject to 37-1-101;

(b) certification of record or other certificate of examination issued to or for the applicant by the national board of medical examiners or successors, by the federation licensing examination committee or successors, or by the medical council of Canada or successors if the applicant is a graduate of a Canadian medical school which has been approved by the medical council of Canada or successors, certifying that the applicant has passed an examination given by the board; or

(c) a valid, unsuspended, and unrevoked license or certificate issued to the applicant on the basis of an examination by an examining board under the laws of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were essentially equivalent, in the judgment of the board, to those of this state at the time for granting a license to practice medicine; and

(d) being a graduate of an approved medical school who has completed 1 year of internship or its equivalent and being of good moral character and good conduct.

(2) The board may require that graduates of foreign medical schools pass the examination given by the education council for foreign medical graduates or successors.

(3) A temporary license may be issued to a physician employed by a public institution who is practicing under the direction of a licensed physician. The board may authorize the department to issue a temporary license subject to terms of probation or other conditions or limitations set by the board or may refuse a temporary license to a person if he has committed unprofessional conduct. The issuance of a temporary certificate imposes no future obligation or duty on the part of the board to grant full licensure or to renew or extend the temporary license. The board may, in the case of an applicant for a temporary certificate, require a written, oral, or practical examination of the applicant.

History: **(1), (2)En. Sec. 17, Ch. 338, L. 1969; amd. Sec. 1, Ch. 166, L. 1974; amd. Sec. 100, Ch. 350, L. 1974; Sec. 66-1026, R.C.M. 1947; (3)En. Sec. 18, Ch. 338, L. 1969; amd. Sec. 3, Ch. 168, L. 1971; amd. Sec. 101, Ch. 350, L. 1974; amd. Sec. 1, Ch. 213, L. 1977; Sec. 66-1027, R.C.M. 1947; R.C.M. 1947, 66-1026, 66-1027(3).**

Cross-References

Licensing investigation and review — record access, 37-1-135.

37-3-308. Examination and application fees — further tax forbidden. (1) An applicant for a license to practice medicine to be issued on the basis of an examination by the board shall pay an examination fee as set by the board. The board shall set the fee, and it shall be reasonable and commensurate with the costs of the examination and related costs. Such examination fee shall be in addition to the application fee.

(2) All applicants, including applicants for a temporary license, shall pay an initial application fee as prescribed by the board.

(3) No license tax shall be imposed upon physicians by a municipality or any other subdivision of the state.

History: En. Sec. 22, Ch. 338, L. 1969; amd. Sec. 1, Ch. 167, L. 1974; R.C.M. 1947, 66-1031; amd. Sec. 2, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "all applicants including applicants for a temporary license, shall pay an initial application fee as prescribed by the board" for "all applicants except applicants for temporary licenses shall pay an initial application fee of $100" in (2); and deleted former subsection (3) which provided for a $25 fee for temporary licenses and renewals.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-3-309. Application for license. (1) A person desiring a license to practice medicine shall make application to the department, verified by oath and in a form prescribed by the board. The application shall be accompanied by the license fee and documents, affidavits, and certificates necessary to establish that the applicant possesses the qualifications prescribed by this chapter apart from an examination required by the board. The burden of proof is on the applicant, but the board may make an independent investigation to determine whether the applicant possesses the qualifications and whether the applicant has committed unprofessional conduct. At the board's request, the applicant shall provide necessary authorizations for the release of records and information pertinent to the board's information.

(2) An applicant for a license on the basis of an examination shall file his application at least 60 days prior to the announced date of the examination. If the applicant is not at the time of filing his application a graduate of but is then in attendance at an approved medical school, he shall submit to the department, instead of a diploma or other required evidence of graduation, a written statement from the dean or other authorized representative of the approved medical school that the applicant will receive his diploma at the end of the then-current school term. The applicant may not be granted a certificate until he has filed with the department his diploma or other acceptable evidence of graduation from the approved medical school and has complied with the requirements of subsection (1) of this section, and no license may be issued to him until he has satisfied the board that he has completed at least 1 year of an approved internship or its equivalent and has otherwise met the requirements for the issuance of a license under this chapter.

History: En. Sec. 23, Ch. 338, L. 1969; amd. Sec. 103, Ch. 350, L. 1974; R.C.M. 1947, 66-1032; amd. Sec. 1, Ch. 348, L. 1983.

Compiler's Comments

1983 Amendment: Near beginning of (2), substituted "60 days" for "30 days".

Cross-References

Oath defined, 1-1-201.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.
Affidavits, Title 26, ch. 1, part 10.
Standardized forms, 37-1-104.
Reporting disciplinary actions against licensees, 37-1-105.
Perjury, 45-7-201.
False swearing, 45-7-202.

37-3-310. Notice of change of address or name — applicants — licensees. When a person applies for a license of any type to practice medicine in this state, the person shall designate in his application his correct and official address to which the department shall send communications, notices, orders, citations, or other process, if any, affecting him. A person licensed to practice medicine in this state shall keep the department advised at all times of his correct mailing address and of his correct name. If the person changes his address or when the name of a licensee is changed by marriage or otherwise, the person shall within 30 days notify the department in writing of his old and new address or of the former name and new name. This information shall be entered promptly by the department in the official records of the department.

History: En. Sec. 39, Ch. 338, L. 1969; amd. Sec. 113, Ch. 350, L. 1974; R.C.M. 1947, 66-1048.

37-3-311. Examination. (1) Examinations for a license to practice medicine shall be held not less than twice each year, at a time and place specified by the board. The examination shall be conducted in the English language and shall be sufficiently comprehensive in medicine to adequately test the applicant's professional competence and ability. The examination shall be fair and impartial. Examination papers shall be identified by both the name of the applicant and a number assigned by the department. The board may require the department to use the examination prepared by the national board of medical examiners or the examination prepared by the federation licensing examination committee or successors.

(2) An applicant must meet the requirements of 37-3-305 prior to taking a scheduled examination.

(3) An applicant who is a graduate of a foreign medical school shall have passed an examination given by the education council for foreign medical graduates or its successor.

(4) The board may in its discretion require the department to give, subject to 37-1-101, an oral or practical examination to test the applicant's qualifications for licensure and grant appropriate credit for this.

(5) The board may use other Montana physicians to assist in preparing the examination.

(6) A person may not be granted a license to practice medicine if he fails to attain a passing grade as set by the board. If an applicant fails to meet the minimum grade requirements in his first examination, he may be reexamined not more than two additional times on each of the component parts of the examination. An examination fee shall be charged for each additional examination. If an applicant is prevented through no fault of his own from taking a scheduled examination, he may, within 2 years, be examined without submitting a new application.

History: En. Sec. 24, Ch. 338, L. 1969; amd. Sec. 2, Ch. 167, L. 1974; amd. Sec. 104, Ch. 350, L. 1974; R.C.M. 1947, 66-1033; amd. Sec. 2, Ch. 348, L. 1983; amd. Sec. 1, Ch. 405, L. 1985.

Compiler's Comments

1985 Amendment: In (6), in first sentence, after "to attain", substituted "a passing grade as set by the board" for "an average grade of at least 75%", in second sentence, after "he may", substituted "be reexamined not more than two additional times on each of the component parts of the examination" for "after not less than 6 months or more than 12 months, be reexamined", and deleted former third sentence that read: "He may take one additional examination, but not less than 1 year after the date of the last preceding examination."

1983 Amendment: In fourth sentence of (1), deleted "may not disclose the name of an applicant but" after "Examination papers" and inserted "both the name of the applicant and" after "shall be identified by"; and inserted (2) and (3).

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-3-312. Issuance of license. If the board determines that an applicant possesses the qualifications required by this chapter, the department shall issue a license to practice medicine, which shall be signed by the president or vice-president, attested by the secretary, and sealed with the seal of the board.

History: En. Sec. 25, Ch. 338, L. 1969; amd. Sec. 105, Ch. 350, L. 1974; R.C.M. 1947, 66-1034(part).

37-3-313. Annual registration fees — failure to pay — limiting authority to impose registration fees. (1) In addition to the license fees required of applicants, a licensed physician actively practicing medicine in this state shall pay each year to the department an annual registration fee as prescribed by the board. If a person licensed to practice medicine absents himself from the state for a period of 1 or more years or does not engage in active practice in this state, he may continue his license in good standing by payment each year of a fee prescribed by the board or, at the discretion of the board, he may be reinstated on the payment of a fee prescribed by the board for each year of absence or inactive practice.

(2) The annual payments for registration shall be made prior to April 1, and a receipt acknowledging payment of the annual registration fee shall be issued by the department. The department shall mail registration notices at least 60 days before the registration is due.

(3) In case of default in the payment of the annual registration fee by a person licensed to practice medicine who is actively practicing medicine in this state, his underlying certificate to practice medicine may be revoked by the board on 30 days' notice given to the delinquent of the time and place of considering the revocation. A registered or certified letter addressed to the last-known address of the person failing to comply with the requirements of annual registration, as the address appears on the records of the department, constitutes sufficient notice of intention to revoke his underlying certificate. No certificate may be revoked for nonpayment if the person authorized to practice medicine, and notified, pays the annual registration fee before or at the time fixed for consideration of revocation, together with a delinquency penalty prescribed by the board. The department may collect the dues by an action at law.

(4) No registration or license fee may be imposed on a licensee under this chapter by a municipality or any other subdivision of the state.

History: En. Sec. 33, Ch. 338, L. 1969; amd. Sec. 110, Ch. 350, L. 1974; amd. Sec. 6, Ch. 533, L. 1977; R.C.M. 1947, 66-1042; amd. Sec. 3, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Deleted ", not to exceed the sum of $100," after "an annual registration fee" in the first sentence of (1); deleted "in an amount not to exceed $50" after "a fee prescribed by the board" in the second sentence of

(1); substituted "may be reinstated on the payment of a fee prescribed by the board" for "may be reinstated on the payment of a fee not to exceed $50" near the end of (1); and substituted "prescribed by the board" for "of $10" after "together with a delinquency penalty" near the end of (3).

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Surcharge for pretrial review fund, 27-6-206.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-3-314. Deposit of money received. Money received under this chapter by the department shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6). In the case of a deficiency, the reserves in this account in the state special revenue fund may be used, on approval by the department of administration and the governor.

History: En. Sec. 34, Ch. 338, L. 1969; amd. Sec. 111, Ch. 350, L. 1974; R.C.M. 1947, 66-1043; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted references to state special revenue fund for references to earmarked revenue fund.

37-3-315 through 37-3-320 reserved.

37-3-321. Refusal of license. If the board determines that an applicant for a license to practice medicine does not possess the qualifications or character required by this chapter or that he has committed unprofessional conduct, it shall refrain from authorizing the department to issue a license. The department shall mail to the applicant, at his last address of record with the department, written notification of the board's decision, together with notice of a time and place of a hearing before the board. If the applicant without cause fails to appear at the hearing or if after hearing the board determines he is not entitled to a license, the board shall refuse to grant the license.

History: En. Sec. 27, Ch. 338, L. 1969; amd. Sec. 106, Ch. 350, L. 1974; R.C.M. 1947, 66-1036.

Cross-References

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

37-3-322. Unprofessional conduct. As used in this chapter, "unprofessional conduct" means:

(1) resorting to fraud, misrepresentation, or deception in applying for or in securing a license or in taking the examination provided for in this chapter;

(2) performing abortion contrary to law;

(3) obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;

(4) willful disobedience of the rules of the board;

(5) conviction of an offense involving moral turpitude or conviction of a felony involving moral turpitude, and the judgment of the conviction, unless pending on appeal, is conclusive evidence of unprofessional conduct;

(6) administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors, otherwise than in the course of legitimate or reputable professional practice;

(7) conviction or violation of a federal or state law regulating the possession, distribution, or use of a narcotic or hallucinatory drug, as defined by the federal food and drug administration, and the judgment of conviction, unless pending on appeal, is conclusive evidence of unprofessional conduct;

(8) habitual intemperance or excessive use of narcotic drugs, alcohol, or any other drug or substance to the extent that the use impairs the user physically or mentally;

(9) conduct unbecoming a person licensed to practice medicine or detrimental to the best interests of the public;

(10) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization;

(11) testifying in court on a contingency basis;

(12) conspiring to misrepresent or willfully misrepresenting medical conditions improperly to increase or decrease a settlement, award, verdict, or judgment;

(13) aiding or abetting in the practice of medicine a person not licensed to practice medicine or a person whose license to practice medicine is suspended;

(14) gross malpractice or negligent practice;

(15) practicing medicine as the partner, agent, or employee of or in joint venture with a person who does not hold a license to practice medicine within this state; however, this does not prohibit the incorporation of an individual licensee or group of licensees as a professional service corporation under Title 35, chapter 4, nor does this apply to a single consultation with or a single treatment by a person or persons licensed to practice medicine and surgery in another state or territory of the United States or foreign country;

(16) violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate parts 1 through 3 of this chapter or the rules authorized by them; or

(17) any other act, whether specifically enumerated or not, which, in fact, constitutes unprofessional conduct.

History: En. Sec. 28, Ch. 338, L. 1969; amd. Sec. 107, Ch. 350, L. 1974; R.C.M. 1947, 66-1037; amd. Sec. 3, Ch. 22, L. 1979.

Cross-References

"Willfully" defined, 1-1-204.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Dangerous drugs, Title 45, ch. 9.

Montana Abortion Control Act, Title 50, ch. 20.

Controlled substances, Title 50, ch. 32.

37-3-323. Revocation or suspension of license — probation. (1) The board may make an investigation whenever it is brought to its attention that there is reason to suspect that a person having a license or certificate to practice medicine in this state:

(a) is mentally or physically unable to safely engage in the practice of medicine, has procured his license to practice medicine by fraud or misrepresentation or through mistake, has been declared incompetent by a court of competent jurisdiction and thereafter has not been lawfully declared competent, or has a condition which impairs his intellect or judgment to the extent that it incapacitates him for the safe performance of professional duties;

(b) has been guilty of unprofessional conduct;

(c) has practiced medicine while his license was suspended or revoked;

(d) has had his license suspended or revoked by any licensing authority for reasons other than nonpayment of fees; or

(e) while under probation has violated its terms.

(2) The investigation shall be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may include requiring the person to submit to a physical examination or a mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine and scrutinize the hospital records and reports of a licensee as part of the examination, and copies of these shall be released to the board on written request. If the board has reasonable cause to believe that this probability exists, the department shall mail to the person at his last address of record with the department a specification of the charges against him, together with a written notice of the time and place of the hearing on such charges, advising him that he may be present in person and by counsel if he so desires to offer evidence and be heard in his defense. The time fixed for the hearing may not be less than 30 days from the date of mailing the notice.

(3) A person, including a member of the board, may file a sworn complaint with the department against a person having a license to practice medicine in this state charging him with the commission of any of the offenses set forth in 37-3-322 or with any of the offenses or conditions set forth in subsection (1) of this section, which complaint shall set forth a specification of the charges. When the complaint is filed, the department shall mail a copy to the person accused at his last address of record with the department, together with a written citation of the time and place of the hearing on it.

(4) At the hearing the board shall adopt a resolution finding him guilty or not guilty of the matters charged. If the board finds that the offenses or conditions referred to in 37-3-322 or subsection (1) of this section do not exist with respect to the person or if he is found not guilty, the board shall dismiss the charges or complaint. If the board finds that the offenses or conditions referred to in 37-3-322 or in subsection (1) of this section do exist and the person is found guilty, the board shall:

(a) revoke his license;

(b) suspend his right to practice for a period not exceeding 1 year;

(c) suspend its judgment of revocation on the terms and conditions to be determined by the board;

(d) place him on probation; or

(e) take any other action in relation to disciplining him as the board in its discretion considers proper.

(5) In a case of revocation, suspension, or probation, the department shall enter in its records the facts of the action and of subsequent action of the board with respect to it.

(6) On the expiration of the term of suspension, the licensee shall be reinstated by the board if he furnishes the board with evidence that he is then of good moral character and conduct and restored to good health and that he has not practiced medicine in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the holder is

then of good moral character and conduct or restored to good health or if the evidence shows he has practiced medicine in this state during the term of suspension, the board shall revoke the license at a hearing with notice and the procedure provided in subsection (1) of this section. The revocation is final and absolute.

(7) If a person holding a license to practice medicine under this chapter is by a final order or adjudication of a court of competent jurisdiction adjudged to be mentally incompetent or seriously mentally ill or addicted to the use of narcotics, his license may be suspended by the board. The suspension continues until the licensee is found or adjudged by the court to be restored to reason or cured or until he is discharged as restored to reason or cured and his professional competence has been proven to the satisfaction of the board.

History: En. Sec. 29, Ch. 338, L. 1969; amd. Sec. 108, Ch. 350, L. 1974; amd. Sec. 1, Ch. 63, L. 1975; amd. Sec. 3, Ch. 101, L. 1977; R.C.M. 1947, 66-1038.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

Judicial review of contested cases, Title 2, ch. 4, part 7.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

37-3-324. Reconsideration and review of actions of board. The board may, on its own motion or upon application at any time after refusal, suspension, or the revocation of a license or of probation or of other action as in this chapter provided, reconsider its prior action and grant, reinstate, or restore such license or terminate the suspension thereof or terminate probation or reduce the severity of its prior disciplinary action, provided that the taking of any such further action or the holding of a hearing with respect thereto shall rest in the sole discretion of the board.

History: En. Sec. 30, Ch. 338, L. 1969; R.C.M. 1947, 66-1039.

37-3-325. Violations — penalties. (1) A person practicing medicine in this state without complying with parts 1 through 3 of this chapter or an association or corporation (except a professional service corporation under Title 35, chapter 4) practicing medicine in this state or a person, association, or corporation violating parts 1 through 3 of this chapter or an officer or director of an association or corporation violating parts 1 through 3 of this chapter is guilty of a misdemeanor and on conviction shall be fined not less than $250 or more than $1,000 or imprisoned in the county jail for not less than 90 days or more than 1 year, or both. Each daily failure to comply with or each daily violation of parts 1 through 3 of this chapter constitutes a separate offense.

(2) A person presenting or attempting to file as his own the diploma, license, certificate, or credentials of another or who gives false or forged evidence to the board, a member of the board, or the department in connection with an application for a license to practice medicine or who practices medicine under a false or assumed name or who falsely impersonates another licensee is guilty of a felony and on conviction shall be imprisoned in the state penitentiary for a term of not less than 1 year or more than 10 years.

History: En. Sec. 32, Ch. 338, L. 1969; amd. Sec. 109, Ch. 350, L. 1974; R.C.M. 1947, 66-1041.

Cross-References

Rights of convicted, Art. II, sec. 28, Mont. Const.

Penalty for unlawful use of physician's assistant, 37-20-104.

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Perjury and other falsification in official matters, Title 45, ch. 7, part 2.

37-3-326. Injunctive relief — manner of charging violation. Notwithstanding any other provision in this chapter, the board may maintain an action to enjoin a person from engaging in the practice of medicine until a license to practice medicine is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court. The injunction does not relieve the person practicing medicine without a license from a criminal prosecution. The remedy by injunction is in addition to remedies provided for the criminal prosecution of the offender. In charging a person in a complaint for injunction or in an affidavit, information, or indictment with a violation of this law by practicing medicine without a license, it is sufficient to charge that he did, on a certain day and in a certain county, engage in the practice of medicine not having a license to do so, without averring further or more particular facts concerning the violation.

History: En. Sec. 36, Ch. 338, L. 1969; amd. Sec. 112, Ch. 350, L. 1974; R.C.M. 1947, 66-1045.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunctions, 37-1-136.

37-3-327. Subpoena — fees. Whenever the board in the transaction of any of its business or in the conduct of any hearing or whenever any person interested in such business or hearing desires to secure the presence for testimony of any person before the board, the board or such person may procure a subpoena from the clerk of district court of the county in which the business is to be transacted or the hearing held. The clerk of the district court shall issue the subpoena in the name of the state of Montana, commanding the person whose presence and testimony is desired to appear before the board at a certain time and place fixed by the board to testify in the manner of such business or in such hearing. The subpoena shall be served in the same manner as a subpoena for a trial in the district court and shall be substantially in the same form. Fees or other charges demanded by a person commanded to appear and testify shall be only those which may be demanded by witnesses in causes in the district court and under the same circumstances.

History: En. Sec. 37, Ch. 338, L. 1969; R.C.M. 1947, 66-1046.

Cross-References

Power of agencies to issue subpoenas, 2-4-104.

Power of hearing officer to issue subpoenas, 2-4-611.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

37-3-328. Failure to appear or testify. Any person subpoenaed in the manner provided in 37-3-327 who fails or refuses to appear and testify shall be dealt with by the district court from which such subpoena was issued in the same manner and to the same effect as though the subpoena had commanded him to appear and testify in a cause on trial in said court.

History: En. Sec. 38, Ch. 338, L. 1969; R.C.M. 1947, 66-1047.

Cross-References
Contempts, Title 3, ch. 1, part 5.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Part 4

Reporting Obligations

Part Cross-References
Montana Medical Legal Panel Act, Title 27, ch. 6.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Nonliability for peer review, Title 37, ch. 2, part 2.

37-3-401. Report of incompetence or unprofessional conduct. (1) Notwithstanding any provision of state law dealing with confidentiality, each licensed physician, professional standards review organization, and the Montana medical association or any component society thereof shall and any other person may report to the state board of medical examiners any information such physician, organization, association, society, or person has which appears to show that a physician is:

(a) medically incompetent;

(b) mentally or physically unable to safely engage in the practice of medicine; or

(c) guilty of unprofessional conduct.

(2) This section applies to professional standards review organizations only to the extent that such organizations are not prohibited from disclosing such information under federal law.

History: En. 66-1053 by Sec. 1, Ch. 172, L. 1977; R.C.M. 1947, 66-1053.

Cross-References
Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Unprofessional conduct, 37-3-322.

37-3-402. Insurer to report to board. Any insurer that issues or underwrites professional liability insurance in this state to any physician licensed to practice medicine shall report any claim against the insured for alleged professional negligence to the state board of medical examiners within 30 days after receiving notice of the claim from the insured or any other person. A final settlement or court decision resolving the claim in favor of the claimant shall also be reported to the board within 30 days of such settlement or decision. The report required by this section shall include the name of the insured, the name of the person making the claim, the reason or reasons for which the claim is made, and the basis of the settlement or court decision.

History: En. 66-1054 by Sec. 2, Ch. 172, L. 1977; R.C.M. 1947, 66-1054; amd. Sec. 4, Ch. 243, L. 1981.

Compiler's Comments
1981 Amendment: Inserted the second sentence pertaining to reporting of settlements; added "and the basis of the settlement or court decision" at the end of the section.

Cross-References
Information required of professional liability insurers — submission, 33-23-311.

37-3-403. Report of prohibition or limitation on practice by hospital. Each hospital or health care facility which prohibits or limits the privilege of a physician to practice medicine within that facility shall report such action to the state board of medical examiners within 30 days after the action is taken if the action is based in whole or in part upon the commission of one or more of the offenses or the existence of one or more of the conditions set forth in 37-3-322 or 37-3-323(1). The report shall include the reason or reasons for the prohibition or limitation.

History: En. 66-1055 by Sec. 3, Ch. 172, L. 1977; R.C.M. 1947, 66-1055.

37-3-404. Immunity of person providing information. A person, organization, association, society, or health care facility which in good faith provides information to the state board of medical examiners as required by 37-3-401, 37-3-402, or 37-3-403 is not subject to suit for civil damages as a result thereof.

History: En. 66-1056 by Sec. 4, Ch. 172, L. 1977; R.C.M. 1947, 66-1056.

Cross-References

Nonliability for peer review, Title 37, ch. 2, part 2.

37-3-405. Suspension of license or privilege for failure to report. The willful failure of any person, organization, association, society, or health care facility to comply with 37-3-401, 37-3-402, or 37-3-403 is grounds for suspension of any license or privilege granted by the state of Montana. Upon such failure, the agency granting the license or privilege may, in its discretion, suspend the license or privilege for a period not to exceed 1 month.

History: En. 66-1057 by Sec. 5, Ch. 172, L. 1977; R.C.M. 1947, 66-1057.

Cross-References

Suspension of license subject to contested case procedure, 2-4-631.

CHAPTER 4

DENTISTRY AND DENTAL HYGIENE

Part 1 — General

Section

37-4-101. Definitions — practice of dentistry.
37-4-102. Designations constituting prima facie evidence of practicing dentistry.
37-4-103. Exemptions.

Part 2 — Board of Dentistry

37-4-201. Official seal — organization — subpoena power.
37-4-202. Meetings — notice — quorum — records.
37-4-203. Compensation and expenses of board members — disbursement of excess funds.
37-4-204. Affiliation with national association authorized — delegates.
37-4-205. Rulemaking.

Part 3 — Licensing

37-4-301. Examination — qualifications — fees — certification.
37-4-302. Recognition of dental schools.

37-4-303. Replacing lost certificate.
37-4-304. Repealed.
37-4-305. Repealed.
37-4-306. Admission of dentists from other states — reciprocity.
37-4-307. Annual renewal fee — default — active, inactive status — continuing education — local fees prohibited.
37-4-308 through 37-4-320 reserved.
37-4-321. Grounds for disciplinary proceedings — range of sanctions.
37-4-322. When publishing professional cards not unprofessional conduct.
37-4-323. Procedure for investigation — sanctions.
37-4-324. Board may procure court order to compel attendance of witnesses — contempt.
37-4-325. Witness fees and mileage.
37-4-326. Acts constituting misdemeanors.
37-4-327. Practicing dentistry without certificate — penalty.
37-4-328. Duty of county attorney — jurisdiction of justices' courts — injunction.

Part 4 — Dental Hygienists and Auxiliary Personnel

37-4-401. Practice of dental hygiene.
37-4-402. License — examination.
37-4-403. Issuance of certificate — fee.
37-4-404. Admission of dental hygienists from other states — reciprocity.
37-4-405. Dental hygienist to practice under supervision of licensed dentist.
37-4-406. Annual renewal fee — default — active, inactive status — continuing education — revocation of license — local fees prohibited.
37-4-407. Provisions not to apply to licensed dentist, physician, or surgeon.
37-4-408. Auxiliary personnel — employment, duties, and limitations.

Part 5 — Regulatory Provisions

37-4-501. Work order for construction or repair of appliances.
37-4-502. Restrictions on advertising and solicitation.
37-4-503. Identification of dentures.
37-4-504 through 37-4-510 reserved.
37-4-511. Limitations on the administration of general anesthetics and practices involving general anesthesia.

Chapter Cross-References

Professional service corporations, Title 35, ch. 4.

General provisions relating to health care practitioners, Title 37, ch. 2.

Validity of consent to medical treatment, Title 41, ch. 1, part 4.

Dentist to report child abuse, 41-3-201.

Part 1

General

Part Cross-References

Limitations on dentistry and oral surgery practices involving general anesthesia, 37-4-511.

Duty of dentist to report violation of Montana Elder Abuse Prevention Act, 53-5-511.

37-4-101. Definitions — practice of dentistry. (1) Unless the context requires otherwise, in this chapter the following definitions apply:

(a) "Board" means the board of dentistry provided for in 2-15-1842.

(b) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(c) "Conscious sedation" means a minimally depressed level of consciousness in which the patient breathes normally without assistance, retains protective reflexes, and responds to physical stimulation or verbal command in a manner appropriate to the patient's cognitive level. Conscious sedation is not a form of general anesthesia, and brief interludes of unconsciousness during conscious sedation do not bring conscious sedation within the scope of general anesthesia.

(d) "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body and a greater or lesser degree of muscular relaxation. The drugs producing this state can be administered by inhalation, intravenously, intramuscularly, or via the gastrointestinal tract. General anesthesia is divided into:

(i) full general anesthesia, which means a level of consciousness in which the patient is without intact protective reflexes, is unable to maintain an airway, and is incapable of rational response to query or command; and

(ii) light general anesthesia, which means a level of consciousness in which the patient breathes normally without assistance and retains protective reflexes throughout most of the procedure.

(e) "General anesthetic" means any recognized anesthetic agent, sedative, hypnotic, tranquilizer, or narcotic used in sufficient prescribed dosages for the purpose of inducing general anesthesia. The term general anesthetic does not include a nitrous oxide/oxygen mixture or any other anesthetic administered to produce conscious sedation.

(2) A person is "practicing dentistry" under this chapter if he:

(a) performs, attempts, advertises to perform, causes to be performed by the patient or any other person, or instructs in the performance of dental operations, oral surgery, or dental service of any kind gratuitously or for a salary, fee, money, or other remuneration paid or to be paid, directly or indirectly, to himself, any other person, or agency;

(b) is a manager, proprietor, operator, or conductor of a place where dental operations, oral surgery, or dental services are performed;

(c) directly or indirectly, by any means or method, furnishes, supplies, constructs, reproduces, or repairs a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

(d) places the appliance or structure in the human mouth or attempts to adjust it;

(e) advertises to the public, by any method, to furnish, supply, construct, reproduce, or repair a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

(f) diagnoses, professes to diagnose, prescribes for, professes to prescribe for, treats, or professes to treat disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures;

(g) extracts or attempts to extract human teeth or corrects, attempts, or professes to correct malpositions of teeth or of the jaw;

(h) gives or professes to give interpretations or readings of dental roentgenograms;

(i) administers an anesthetic of any nature, subject to the limitations provided in 37-4-511, in connection with a dental operation;

(j) uses the words "dentist", "dental surgeon", "oral surgeon", the letters "D.D.S.", "D.M.D.", or any other words, letters, title, or descriptive matter which in any way represents him as being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures;

(k) states, advertises, or permits to be stated or advertised, by sign, card, circular, handbill, newspaper, radio, or otherwise, that he can perform or will attempt to perform dental operations or render a diagnosis in connection therewith; or

(l) engages in any of the practices included in the curricula of recognized dental colleges.

History: (1)En. 66-901.1 by Sec. 77, Ch. 350, L. 1974; Sec. 66-901.1, R.C.M. 1947; (2)En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; Sec. 66-910, R.C.M. 1947; R.C.M. 1947, 66-901.1, 66-910(1); amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 4, Ch. 363, L. 1981; amd. Sec. 1, Ch. 518, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (1)(c) through (1)(e); and in (2)(i) after "nature", inserted "subject to the limitations provided in 37-4-511".

1981 Amendments: Chapter 274 substituted "department of commerce" for "department of professional and occupational licensing" in (1)(b); changed internal references to the department and the board.

Chapter 363 changed "board of dentists" to "board of dentistry" in (1)(a).

Cross-References

Exemptions from physician's licensing requirements, 37-3-103.

37-4-102. Designations constituting prima facie evidence of practicing dentistry. Whenever any person shall append the word "dentist" or the letters "D.D.S.", "D.M.D.", or like letters to his or her name in any way for advertising or upon any door or sign or upon or in any writing or print, publish, or use the same in any way or cause either of the same to be done, the same shall be prima facie evidence that such person is engaged in the practice of dentistry and subject to the regulations, convictions, and penalties of this chapter.

History: En. Sec. 12, Ch. 48, L. 1935; re-en. Sec. 3115.12, R.C.M. 1935; R.C.M. 1947, 66-912.

37-4-103. Exemptions. (1) A dental laboratory or dental technician is not practicing dentistry under this chapter when engaged in the construction, making, alteration, or repairing of bridges, crowns, dentures, or other prosthetic appliances, surgical appliances, or orthodontic appliances if the casts, models, or impressions on which the work is constructed have been made by a regularly licensed and practicing dentist and the crowns, bridges, dentures, prosthetic appliances, surgical appliances, or orthodontic appliances are returned to the dentist on whose order the work was constructed.

(2) Section 37-4-101(2) and part 5 of this chapter do not apply to a legally qualified physician or surgeon or to a dental surgeon of the United States army, navy, public health service, or veterans' bureau or to a legal practitioner of another state making a clinical demonstration before a dental society, convention, or association of dentists or to a licensed dental hygienist performing an act authorized under 37-4-401 or 37-4-405.

(3) Nothing in this chapter prevents a bona fide faculty member of a school, college, or department of a university recognized and approved by the board from performing dental procedures necessary to his teaching functions. Nothing in this chapter prevents students from performing dental procedures under the supervision of a bona fide instructor of a school, college, or department of a university recognized and approved by the board provided such dental procedures are a part of the assigned teaching curriculum.

(4) This chapter does not prohibit or require a license with respect to the practice of denturitry under the conditions and limitations defined by Title 37, chapter 29. None of the regulations contained in this chapter apply to a person engaged in the lawful practice of denturitry.

History: En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; R.C.M. 1947, 66-910(2), (4); amd. Sec. 1, Ch. 337, L. 1979; amd. Sec. 24, I.M. No. 97, approved Nov. 6, 1984.

Compiler's Comments

1984 Initiative Amendment: Inserted (4).

Part 2

Board of Dentistry

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1842.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-4-201. Official seal — organization — subpoena power. Said board shall have an official seal of its own design and shall employ the same to authenticate its acts and records as may be required. The board shall, at its annual meeting, choose from its members a president, vice-president, and secretary-treasurer, who shall serve at the pleasure of the board. Any member of the board shall have the power to administer oaths and affirmations and said board shall have the power to hear testimony and subpoena witnesses as to all matters relating to the duties imposed upon it by law.

History: En. Sec. 3, Ch. 48, L. 1935; re-en. Sec. 3115.3, R.C.M. 1935; R.C.M. 1947, 66-903.

Cross-References

Oath defined, 1-1-201.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Oaths, Title 1, ch. 6.

Power of agencies to issue subpoenas, 2-4-104.

Power of hearing officer to issue subpoenas, 2-4-611.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

37-4-202. Meetings — notice — quorum — records. (1) The board shall meet at least once each year in this state at the call of the president and secretary-treasurer. Five days' notice must be given by the department to board members of the time and place of the meeting of the board.

(2) Meetings held for the purpose of examining candidates for a license to practice dentistry in this state may not exceed 6 days.

(3) Four members of the board constitute a quorum for the transaction of business. Its proceedings are open to public inspection in cases of public interest.

(4) Money collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

(5) The department shall keep a complete record of meetings and proceedings of the board and shall keep a complete account of moneys received and disbursements made by the department.

History: (1), (3) thru (5)En. Sec. 4, Ch. 48, L. 1935; re-en. Sec. 3115.4, R.C.M. 1935; amd. Sec. 147, Ch. 147, L. 1963; amd. Sec. 25, Ch. 177, L. 1965; amd. Sec. 21, Ch. 93, L. 1969; amd.

Sec. 1, Ch. 352, L. 1969; amd. Sec. 78, Ch. 350, L. 1974; Sec. 66-904, R.C.M. 1947; (2)En. Sec. 9, Ch. 48, L. 1935; re-en. Sec. 3115.9, R.C.M. 1935; amd. Sec. 149, Ch. 147, L. 1963; amd. Sec. 4, Ch. 352, L. 1969; amd. Sec. 82, Ch. 350, L. 1974; amd. Sec. 29, Ch. 439, L. 1975; amd. Sec. 2, Ch. 531, L. 1977; Sec. 66-909, R.C.M. 1947; R.C.M. 1947, 66-904, 66-909(2); amd. Sec. 2, Ch. 316, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Public records, Title 2, ch. 6.

Preservation of records, Title 22, ch. 3, part 2.

Duty of Department to keep records, 37-1-101.

Duty of Department to provide facilities, 37-1-101.

Licensing investigation and review — records access, 37-1-135.

Disrupting meeting as disorderly conduct, 45-8-101.

37-4-203. Compensation and expenses of board members — disbursement of excess funds. (1) Out of the funds derived from fees collected under this chapter, each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

(2) Money collected in excess of expenses and salaries provided for shall be held by the department as a special fund for meeting the expenses of the board, the proper administration of this chapter, and educational purposes considered wise by the board.

History: En. Sec. 9, Ch. 48, L. 1935; re-en. Sec. 3115.9, R.C.M. 1935; amd. Sec. 149, Ch. 147, L. 1963; amd. Sec. 4, Ch. 352, L. 1969; amd. Sec. 82, Ch. 350, L. 1974; amd. Sec. 29, Ch. 439, L. 1975; amd. Sec. 2, Ch. 531, L. 1977; R.C.M. 1947, 66-909(1), (3); amd. Sec. 5, Ch. 363, L. 1981; amd. Sec. 8, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 363 deleted the last two sentences of (2) relating to emergency funds.

Chapter 474 substituted language after "shall" in (1) for "be reimbursed as follows: (a) $25 per day for each day in actual attendance at a meeting of the board; (b) expenses and travel authorized under 2-18-501 through 2-18-503".

37-4-204. Affiliation with national association authorized — delegates. The board may affiliate with the national association as an active member, pay regular annual dues to the association, and send delegates to the meetings of the association.

History: En. Sec. 20, Ch. 48, L. 1935; re-en. Sec. 3115.20, R.C.M. 1935; amd. Sec. 8, Ch. 352, L. 1969; amd. Sec. 87, Ch. 350, L. 1974; R.C.M. 1947, 66-920; amd. Sec. 6, Ch. 363, L. 1981; amd. Sec. 9, Ch. 474, L. 1981; amd. Sec. 1, Ch. 349, L. 1983.

Compiler's Comments

1983 Amendment: Substituted "delegates" for "delegate".

1981 Amendments: Chapter 363 deleted former subsection (3) relating to railroad fares; and made minor changes in phraseology and punctuation.

Chapter 474 deleted subsections (1) through (3) relating to delegate reimbursement.

37-4-205. Rulemaking. The board may adopt, amend, or repeal rules necessary for the implementation, continuation, and enforcement of this chapter in accordance with the Montana Administrative Procedure Act. Rules adopted under this section may include but are not limited to the following subjects:

(1) the practice of dentistry or oral surgery involving the administration of anesthetics; and

(2) advertising by a licensed dentist including:

(a) the use of false, deceptive, or misleading advertising;

(b) the use of information concerning fees, areas of practice, specialization, personal background, and quality of service in advertising; and

(c) the use of warnings and disclaimers in advertising.

History: **En. Sec. 2, Ch. 349, L. 1983; amd. Sec. 3, Ch. 518, L. 1985.**

Compiler's Comments

1985 Amendment: Inserted remainder of section after first sentence.

Cross-References

Administrative Procedure Act, Title 2, ch. 4.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-4-301. Examination — qualifications — fees — certification. (1) Applicants for licensure shall take and pass an examination in order to be licensed. The examination shall consist of a written part, a practical or clinical part, and an oral interview with the board which may include questions pertaining to the practice of dentistry. The board may accept, in satisfaction of the written part, successful completion of an examination by the national board of dental examiners and, whenever the board determines necessary, successful completion of a board examination in jurisprudence. The board may accept, in satisfaction of the practical part, successful completion of an examination by a board-designated regional testing service.

(2) Acceptance by the board of such written and practical examination shall be conditioned on evidence that the examination is sufficiently thorough to test the fitness of the applicant to practice dentistry. It shall include, written in the English language, questions on anatomy, histology, physiology, chemistry, pharmacology and therapeutics, metallurgy, pathology, bacteriology, anesthesia, operative and surgical dentistry, prosthetic dentistry, prophylaxis, orthodontics, periodontics and endodontics, and any additional subjects pertaining to dental service.

(3) The board has the right to administer its own examination in lieu of acceptance of the national board written examination and a regional testing service practical examination. The board is authorized to make rules governing any such examination procedures.

(4) Applicants for licensure shall submit an application, which shall include, when required:

(a) certification of successful completion of the national board written examination;

(b) certification of successful completion of a regional board practical examination;

(c) three affidavits of good moral character;

(d) certificate of graduation from a board-approved dental school;

(e) an examination fee commensurate with costs and set by the board;

(f) a licensure fee commensurate with costs and set by the board;

(g) a recent photograph of the applicant; and

(h) copies of all other state licenses that are held by the applicant.

(5) Applications must be submitted no less than 20 days prior to the board interview and jurisprudence examination.

(6) Applicants may not take the jurisprudence examination or the oral interview without first having completed and passed all other parts of the examination.

(7) Examination results will be accepted for a period of time as set by board rule. An applicant failing to pass his first examination, if otherwise qualified, may take a subsequent examination upon payment of a fee commensurate with costs and set by the board.

(8) The board is authorized to adopt necessary and reasonable rules governing application procedures.

History: **En. Sec. 5, Ch. 48, L. 1935; re-en. Sec. 3115.5, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1941; amd. Sec. 1, Ch. 34, L. 1961; amd. Sec. 2, Ch. 352, L. 1969; amd. Sec. 1, Ch. 287, L. 1971; amd. Sec. 79, Ch. 350, L. 1974; R.C.M. 1947, 66-905; amd. Sec. 2, Ch. 337, L. 1979; amd. Sec. 3, Ch. 349, L. 1983.**

Compiler's Comments

1983 Amendment: In (2) added "periodontics" to exam subjects; inserted (4)(h); in (6) inserted "and passed"; and deleted (9), which read: "The board may in its discretion permit a dental student who has successfully completed his junior year in a recognized dental school and who files proof satisfactory to the board that he has the preliminary education described in this section to take a written examination in the subjects he has completed. Satisfactory grades secured shall be credited on the final examination of the student. The board shall require a fee commensurate with costs and set by the board for this examination, which shall apply on the final examination taken by the applicant."

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

37-4-302. Recognition of dental schools. In determining what shall constitute a recognized dental college or school and/or a recognized school of dental hygiene, the board shall be guided by the standards, canons, and practices required for such recognition by the council on dental education of the American dental association.

History: **En. Sec. 24, Ch. 48, L. 1935; re-en. Sec. 3115.24, R.C.M. 1935; amd. Sec. 13, Ch. 352, L. 1969; R.C.M. 1947, 66-924.**

37-4-303. Replacing lost certificate. The department shall, on proof satisfactory to the board of the loss of a certificate issued under this chapter, issue a duplicate certificate, and a fee as prescribed by the board shall be charged for issuing the certificate.

History: **En. Sec. 6, Ch. 48, L. 1935; re-en. Sec. 3115.6, R.C.M. 1935; amd. Sec. 2, Ch. 34, L. 1961; amd. Sec. 148, Ch. 147, L. 1963; amd. Sec. 3, Ch. 352, L. 1969; amd. Sec. 80, Ch. 350, L. 1974; R.C.M. 1947, 66-906(1); amd. Sec. 1, Ch. 66, L. 1981; amd. Sec. 4, Ch. 345, L. 1981.**

Compiler's Comments

1981 Amendments: Chapter 66 deleted former subsection (1) relating to registering a certificate with the county clerk and recorder.

Chapter 345 substituted "a fee as prescribed by the board" for "a fee of $10" in (2).

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-4-304. Repealed. Sec. 4, Ch. 66, L. 1981.

History: **En. Sec. 7, Ch. 48, L. 1935; re-en. Sec. 3115.7, R.C.M. 1935; R.C.M. 1947, 66-907.**

37-4-305. Repealed. Sec. 4, Ch. 66, L. 1981.

History: En. Sec. 8, Ch. 48, L. 1935; re-en. Sec. 3115.8, R.C.M. 1935; amd. Sec. 81, Ch. 350, L. 1974; R.C.M. 1947, 66-908.

37-4-306. Admission of dentists from other states — reciprocity. (1) A dentist who has been lawfully licensed to practice in another state or territory which has and maintains a standard for the practice of dentistry or dental surgery which in the opinion of the board is equal to that at the time maintained in this state, is a graduate of an accredited 4-year high school or has actual scholastic credits equivalent to a 4-year high school course, is a graduate of a recognized dental school or college, has been lawfully and continuously engaged in the practice of dentistry for 5 years or more immediately before filing his application to practice in this state, and deposits in person with the department an attested certificate from the examining board of the state or territory in which he is registered or licensed, certifying to the fact of his registration and license and of his being a person of good moral character and of professional attainments, may, on the payment of a fee as prescribed by the board, and after satisfactory practical examination demonstrating his proficiency, be granted a license to practice dentistry in this state without being required to take an examination in theory.

(2) However, no license may be issued to an applicant without an examination in theory unless the state or territory from which the certificate has been granted to the applicant extends a like privilege to engage in the practice of dentistry to dentists licensed by this state who move to the other state. The board may enter into reciprocal relations with similar boards of other states whose laws are practically identical with this chapter.

History: En. Sec. 6, Ch. 48, L. 1935; re-en. Sec. 3115.6, R.C.M. 1935; amd. Sec. 2, Ch. 34, L. 1961; amd. Sec. 148, Ch. 147, L. 1963; amd. Sec. 3, Ch. 352, L. 1969; amd. Sec. 80, Ch. 350, L. 1974; R.C.M. 1947, 66-906(2); amd. Sec. 5, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "on the payment of a fee as prescribed by the board" for "on the payment of a fee of $50" near the end of (1).

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-4-307. Annual renewal fee — default — active, inactive status — continuing education — local fees prohibited. (1) Every licensed dentist shall pay each year a renewal fee to the board. The renewal fee must be set by the board commensurate with costs. Notice of the change in the amount of renewal fees must be given to each dentist registered in this state by the department.

(2) Payment of the annual renewal fee must be made prior to March 1 of each year, and a license renewal must be issued by the department. A reasonable late fee is required if the annual renewal fee is not paid before March 1.

(3) The board may adopt rules governing requirements for demonstrating continued competency for license renewal.

(4) (a) The board may reclassify an active status license to inactive status for a licensee who furnishes satisfactory evidence that the licensee has discontinued the actual practice of dentistry because of physical disability or retirement.

(b) An individual who wishes to maintain a Montana license but does not maintain a resident practice must be licensed in the inactive status.

(c) Application to convert an inactive status license to an active status license must be made in accordance with rules of the board. The application to convert to active status must accompany the submission of the renewal fee prescribed for such license. If more than 1 year has passed since the license was inactivated, satisfactory evidence of competence must be submitted to the board before an active status license may be issued.

(5) (a) In case of default in payment of the annual renewal fee by a licensee, his license must be revoked by the board. The board shall give the licensee 30 days' notice of its proposed revocation action. The notice must be sent by certified letter addressed to the last-known address of the licensee and must contain a statement of the time and place of the meeting at which the revocation will be considered.

(b) If the licensee pays the renewal fee, plus a reasonable late fee set by the board, prior to the time set for revocation, the license may not be revoked.

(c) A license revoked for nonpayment of the renewal fee may be reinstated within 5 years of revocation if:

(i) renewal fees are paid for each year they were unpaid, plus a late penalty fee for each year;

(ii) the applicant produces evidence, satisfactory to the board, of good standing with the dentistry regulatory agencies of any jurisdiction in which the applicant has engaged in the active practice of dentistry since the last payment of a renewal fee under this chapter; and

(iii) the applicant produces evidence, satisfactory to the board, of good character and competence.

(6) Every dentist shall give the board notice of any change in name, address, or status within 30 days of the change.

(7) No unit of local government, including those exercising self-government powers, may impose a license fee on a dentist licensed under this chapter.

History: En. Sec. 6, Ch. 48, L. 1935; re-en. Sec. 3115.6, R.C.M. 1935; amd. Sec. 2, Ch. 34, L. 1961; amd. Sec. 148, Ch. 147, L. 1963; amd. Sec. 3, Ch. 352, L. 1969; amd. Sec. 80, Ch. 350, L. 1974; R.C.M. 1947, 66-906(3) thru (6); amd. Sec. 3, Ch. 337, L. 1979; amd. Sec. 6, Ch. 345, L. 1981; amd. Sec. 7, Ch. 363, L. 1981; amd. Sec. 4, Ch. 349, L. 1983.

Compiler's Comments

1983 Amendment: Rewrote entire section, which read: "(1) A licensed dentist practicing within this state shall annually pay to the department before March 1, as a renewal fee for the year, a sum set by the board. Notice of the change in the amount of renewal fees shall be given to each dentist registered in this state by the department.

(2) If a registered dentist absents himself from the state for a period of 1 or more years or does not engage in active practice within this state, he may continue his license in good standing by a payment set by the board each year or at the discretion of the board, he may be reinstated on the payment of a fee prescribed by the board for each year's absence. The annual payments shall be made prior to March 1 of each year, and a receipt or certificate shall be issued by the department.

(3) In case of default in payment of the annual renewal fee by a dentist, his license shall be revoked by the board on 30 days' notice given to the delinquent of the time and place of considering the revocation. A registered or certified letter addressed to the last-known address of the party failing to comply with this requirement, as the address appears on the records of the department, constitutes sufficient notice of revocation of license, but no license may be revoked for nonpayment if the dentist notified pays the renewal fee plus a late payment penalty prescribed by the board before or at the time fixed for consideration of revocation. The department may maintain in the name of this state a suit to collect renewal fees and penalties

applicable and to recover from the delinquent dentist the cost of the action, including reasonable attorneys' fees.

(4) No license fee or tax may be imposed on dentists by a municipality or any other subdivision of the state."

1981 Amendments: Chapter 345 deleted "and not to exceed $50." Chapters 345 and 363 deleted "The board may increase or decrease the annual renewal fee to maintain in the earmarked revenue fund at all times an amount, to be known as the emergency fund, to be used for the purpose of administering, policing, and enforcing this chapter. The emergency fund shall be maintained at an approximate level of $2,500" after "a sum set by the board" in (1); Ch. 345 deleted ", not to exceed $25," after "a payment set by the board each year" in (2); substituted "a fee prescribed by the board" for "a fee of $25" in (2); and substituted "penalty prescribed by the board" for "penalty of $10" in the middle of (3).

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-4-308 through 37-4-320 reserved.

37-4-321. Grounds for disciplinary proceedings — range of sanctions. The board may censure, prescribe probation, suspend, or revoke any license issued under this chapter for any of the following causes:

(1) physical or mental incompetence;

(2) gross malpractice or repeated malpractice;

(3) unprofessional conduct, as defined by rule of the board; or

(4) violation of any of the provisions of this chapter or rules or orders of the board.

History: En. Sec. 13, Ch. 48, L. 1935; re-en. Sec. 3115.13, R.C.M. 1935; amd. Sec. 6, Ch. 352, L. 1969; amd. Sec. 85, Ch. 350, L. 1974; R.C.M. 1947, 66-913(1), (2); amd. Sec. 1, Ch. 493, L. 1979; amd. Sec. 8, Ch. 363, L. 1981.

Compiler's Comments

1981 Amendment: Deleted former subsection (1) relating to conviction of a felony or misdemeanor.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Disciplinary authority of boards — injunctions, 37-1-136.

37-4-322. When publishing professional cards not unprofessional conduct. (1) It shall not be considered unprofessional for a dentist to place in any newspaper or publication, subject to the limitations stated hereafter, a card bearing his name only, together with his degree or the word "dentist" and giving office location, hours, and telephone numbers. If he limits his practice to a specialty he may so announce it or he may announce his absence from or his return to practice in the same manner.

(2) A dentist may publish a list of his fees, but such listing must include full and complete information stating if the published fee is minimum, maximum, or usual and whether or not any additional charges may be made for the services published. All announcements or publications must be done in a professional manner that will in no way coerce or confuse the public.

History: En. Sec. 17, Ch. 48, L. 1935; re-en. Sec. 3115.17, R.C.M. 1935; amd. Sec. 5, Ch. 34, L. 1961; amd. Sec. 7, Ch. 352, L. 1969; R.C.M. 1947, 66-917; amd. Sec. 2, Ch. 493, L. 1979.

37-4-323. Procedure for investigation — sanctions. (1) Upon receipt of a complaint or upon its own motion the board shall determine whether the matters alleged warrant investigation and may cause investigation to be made. If the board finds preliminary cause for imposing the sanctions listed in 37-4-321, it may do so in accordance with the provisions of the

Montana Administrative Procedure Act. If the board finds that the evidence obtained does not justify the imposition of sanctions, it must so notify the licensee concerned and the complaining party and take no further action.

(2) If the board finds that the evidence obtained does not warrant suspension or revocation of a license but does warrant other sanctions, it may either:

(a) issue a public or private decree of censure; or

(b) impose a probation with terms and conditions appropriately adapted under the circumstances of the particular case.

(3) The licensee is entitled to an opportunity for a contested case hearing before a sanction of censure or probation becomes effective to the same extent an opportunity for hearing is afforded prior to suspension or revocation.

(4) In addition to its authority to impose sanctions, the board may deny an application for a license for any of the following reasons:

(a) failure to meet the relevant requirements of Title 37, chapter 4;

(b) making any untrue or fraudulent statement in support of the application; or

(c) any of the grounds set forth in 37-4-321 for suspension or revocation of a license.

History: En. Sec. 13, Ch. 48, L. 1935; re-en. Sec. 3115.13, R.C.M. 1935; amd. Sec. 6, Ch. 352, L. 1969; amd. Sec. 85, Ch. 350, L. 1974; R.C.M. 1947, 66-913(3) thru (6); amd. Sec. 3, Ch. 493, L. 1979.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensee, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

37-4-324. Board may procure court order to compel attendance of witnesses — contempt. (1) The district court in and for the county in which any inquiry, investigation, hearing, or proceeding may be held by the board or any member thereof shall have the power to compel the attendance of witnesses, the giving of testimony, and the production of papers, books, accounts, and documents as required by any subpoena issued by the board or any member thereof.

(2) In case of the refusal of any witness to attend or testify or produce any papers required by such subpoena, the board or any member thereof before whom the testimony is to be given or produced may report to the district court in and for the county in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place fixed for the attendance of said witness or the production of said papers and that the witness has been summoned in the manner prescribed in this chapter and that the witness has failed and refused to attend or produce the papers required by the subpoena before the board or any member thereof in the case or proceeding named in the notice and subpoena or has refused to answer questions propounded to him in the course of such proceedings and ask an order of said court compelling the witness to attend and testify or produce said papers before the board. The court, upon the petition of the board or any

member of the board, shall enter an order directing the witness to appear before the court at the time and place to be fixed by the court in such order, not more than 10 days from the date of the order, and then and there show cause why he has not attended or testified or produced such papers before the board. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the board or a member thereof and regularly served, the court shall thereupon enter an order that said witness appear at the time and place fixed in said order and testify or produce the required papers, and upon failure to obey said order, said witness shall be dealt with as for contempt of court.

History: En. Sec. 16, Ch. 48, L. 1935; re-en. Sec. 3115.16, R.C.M. 1935; R.C.M. 1947, 66-916.

Cross-References

Power of agencies to issue subpoenas, 2-4-104.

Power of hearing officer to issue subpoenas, 2-4-611.

Contempts, Title 3, ch. 1, part 5.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

37-4-325. Witness fees and mileage. (1) Each witness who shall appear by order of the board or any member thereof shall be entitled to receive, if demanded, for his attendance the same fees and mileage allowed by law to a witness in civil cases in the district court, which amount shall be paid by the party at whose request such witness is subpoenaed unless otherwise ordered by the board. When any witness who has not been required to attend at the request of any party is subpoenaed by the board, his fees and mileage may be paid from the funds of the board in the same manner as other expenses of the board are paid.

(2) Any witness subpoenaed, except one whose fees and mileage may be paid from the funds of the board, may at the time of service demand the fee to which he is entitled for travel to and from the place at which he is required to appear and 1 day's attendance. If such witness demands such fees at the time of service and they are not at that time paid or tendered, he shall not be required to attend before the board or a member thereof or referee as directed in the subpoena.

History: En. Sec. 15, Ch. 48, L. 1935; re-en. Sec. 3115.15, R.C.M. 1935; R.C.M. 1947, 66-915.

Cross-References

Mileage allowed witnesses, 2-18-503, 2-18-504.

Witness fees, Title 26, ch. 2, part 5.

37-4-326. Acts constituting misdemeanors. Any person, company, or association shall be guilty of a misdemeanor and upon conviction thereof shall be punishable with a fine of not less than $50 or more than $200 or by imprisonment for not more than 6 months in the county jail or by both such fine and imprisonment who shall:

(1) sell or barter or offer to sell or barter any diploma or document conferring or purporting to confer any dental degree or any certificate or transcript made or purporting to be made pursuant to the laws regulating the license and regulation of dentists;

(2) purchase or procure by barter any such diploma, certificate, or transcript with intent that the same shall be used as evidence of the holder's qualification to practice dentistry or in fraud of the laws regulating such practice;

(3) with fraudulent intent, alter in a material regard any such diploma, certificate, or transcript;

(4) use or attempt to use any such diploma, certificate, or transcript which has been purchased, fraudulently issued, counterfeited, or materially altered, either as a license or color of license to practice dentistry or in order to procure registration as a dentist;

(5) practice dentistry under a false or assumed name;

(6) in an affidavit required of an applicant for examination, license, or registration under this chapter, willfully make a false statement in a material regard;

(7) engage in the practice of dentistry under any title or name without causing to be displayed in a conspicuous manner and in a conspicuous place in his or her office the required annual registration certificate for the current year; or

(8) within 10 days after demand made by the secretary of the board, fail to furnish to said board the names and addresses of all persons practicing or assisting in the practice of dentistry in the office of said person, company, or association at any time within 60 days prior to said notice, together with a sworn statement showing under and by what license or authority said person, company, or association and said employee are and have been practicing dentistry, but said affidavit shall not be used as evidence against said person, company, or association in any proceeding under this section.

History: **En. Sec. 18, Ch. 48, L. 1935; re-en. Sec. 3115.18, R.C.M. 1935; R.C.M. 1947, 66-918.**

Cross-References

"Willfully" defined, 1-1-204.

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

37-4-327. Practicing dentistry without certificate — penalty. (1) A person who, as principal, agent, employer, employee, or assistant, practices dentistry or who does an act of dentistry without having first secured a certificate to practice dentistry from the department entitling him to practice in this state is guilty of a misdemeanor and on conviction in a district court may be fined not less than $500 or more than $1,000 or be confined for a period not exceeding 6 months in the county jail.

(2) Fines imposed and collected under this chapter shall be paid into the treasury of the county in which the suits, actions, or proceedings are commenced. Money paid into the treasury over and above the amount necessary to reimburse the county for expense incurred by the county in a suit, action, or proceeding brought under this chapter shall be deposited before January 1 of each year in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: **En. Sec. 19, Ch. 48, L. 1935; re-en. Sec. 3115.19, R.C.M. 1935; amd. Sec. 3, Ch. 38, L. 1941; amd. Sec. 150, Ch. 147, L. 1963; amd. Sec. 86, Ch. 350, L. 1974; R.C.M. 1947, 66-919; amd. Sec. 1, Ch. 277, L. 1983.**

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

37-4-328. Duty of county attorney — jurisdiction of justices' courts — injunction. (1) The county attorney of the county in which an offense is alleged to have occurred shall attend to the prosecution of complaints made under this chapter, both on trial in the justice's court where the complaint is made and also on hearing in the district court, either on the complaint or on information or indictment filed against a person under this chapter in the district court. This chapter does not prevent the prosecution of a person for violation of this chapter on the information of the county attorney directly.

(2) Justice's courts have original concurrent jurisdiction of misdemeanors committed under this chapter.

(3) If a person, firm, or corporation engages in the practice of dentistry without possessing a valid license or violates this chapter, the attorney general, a county attorney, or the board may maintain an action in the name of this state to enjoin the person, firm, or corporation from engaging in the practice of dentistry or otherwise violating this chapter. The injunction does not relieve criminal prosecution, but the remedy by injunction is in addition to the liability of the offender to criminal prosecution.

History: En. Sec. 11, Ch. 48, L. 1935; re-en. Sec. 3115.11, R.C.M. 1935; amd. Sec. 4, Ch. 34, L. 1961; amd. Sec. 84, Ch. 350, L. 1974; R.C.M. 1947, 66-911.

Cross-References

Duties of Attorney General, 2-15-501.

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Criminal jurisdiction of Justices' Courts, 3-10-303.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunctions, 37-1-136.

Part 4

Dental Hygienists and Auxiliary Personnel

37-4-401. Practice of dental hygiene. The practice of dental hygiene is services, performed by a licensed preventive oral health practitioner known as a dental hygienist, that are educational, therapeutic, prophylactic, or preventive procedures in nature, as the board in writing defines and authorizes. These services include and the board shall authorize the administration of local anesthetic agents by a licensed dental hygienist certified by the board to administer the agents under the direct supervision and authorization of a licensed dentist. However, this section does not allow the board or a licensed dentist to delegate any of the following duties:

(1) diagnosis, treatment planning, and prescription;

(2) surgical procedures on hard and soft tissues other than root planing and subgingival curettage;

(3) restorative, prosthetic, orthodontic, and other procedures which require the knowledge and skill of a dentist;

(4) prescription for drugs or medications or work authorizations.

History: En. Sec. 21, Ch. 48, L. 1935; re-en. Sec. 3115.21, R.C.M. 1935; amd. Sec. 9, Ch. 352, L. 1969; amd. Sec. 88, Ch. 350, L. 1974; R.C.M. 1947, 66-921(part); amd. Sec. 5, Ch. 349, L. 1983; amd. Sec. 1, Ch. 449, L. 1985.

Compiler's Comments

1985 Amendment: In opening paragraph inserted second sentence relating to administering local anesthetic.

1983 Amendment: In opening paragraph, substituted "services, performed by a licensed preventive oral health practitioner known as a dental hygienist, that are" for "the doing by one person for a direct or indirect consideration, with respect to the teeth of another person, an act or service" and inserted "procedures" after "preventive"; and in (2) inserted "other than root planing and subgingival curettage".

Cross-References

Practice of healing arts not practice of medicine, 37-3-103(1)(n).

37-4-402. License — examination. (1) The department may issue licenses for the practice of dental hygiene to qualified applicants to be known as dental hygienists.

(2) Except as provided in 37-4-404, no person may engage in the practice of dental hygiene or practice as a dental hygienist in this state until he has passed an examination approved by the board under rules it considers proper and has been issued a license by the department.

(3) Applicants for licensure shall take and pass an examination in order to be licensed. The examination shall consist of a written part and a practical or clinical part. The board may accept, in satisfaction of the written part, successful completion of an examination by the national board of dental examiners and, whenever the board determines necessary, successful completion of a board examination in jurisprudence. The board may accept, in satisfaction of the practical part, successful completion of an examination by a board-designated regional testing service.

(4) The board has the right to administer its own examination in lieu of acceptance of the national board written examination and a regional testing service practical examination. The board is authorized to make rules governing any such examination procedures.

(5) Applicants for licensure shall submit an application, which shall include, when required:

(a) certification of successful completion of the national board written examination;

(b) certification of successful completion of a regional board practical examination;

(c) two affidavits of good moral character;

(d) certificate of graduation from a board-approved dental hygiene school;

(e) an examination fee commensurate with costs and set by the board;

(f) a licensure fee commensurate with costs and set by the board;

(g) a recent photograph of the applicant; and

(h) copies of all other state licenses that are held by the applicant.

(6) Applications must be submitted no less than 20 days prior to the jurisprudence examination. Applicants may not take the jurisprudence examination without first having completed and passed all other parts of the examination.

(7) Examination results will be accepted for a period of time as set by board rule. An applicant failing to pass his first examination, if otherwise qualified, may take a subsequent examination on payment of a fee commensurate with costs and set by the board.

(8) The board is authorized to adopt necessary and reasonable rules governing application procedures.

History: En. Secs. 21, 23, Ch. 48, L. 1935; re-en. Secs. 3115.21, 3115.23, R.C.M. 1935; amd. Secs. 9, 11, Ch. 352, L. 1969; amd. Secs. 88, 90, Ch. 350, L. 1974; R.C.M. 1947, 66-921(part),

66-923(3); amd. Sec. 4, Ch. 337, L. 1979; amd. Sec. 6, Ch. 349, L. 1983; amd. Sec. 2, Ch. 449, L. 1985.

Compiler's Comments

1985 Amendment: In (3) in second sentence, after "written part", inserted "and" and after "clinical part", deleted "and an oral interview with the board which may include questions pertaining to the practice of dental hygiene"; in (6) in first sentence, before "jurisprudence examination", deleted "board interview and" and in second sentence, after "jurisprudence examination", deleted "or the oral interview".

1983 Amendment: Inserted (5)(h); and in (6), inserted second sentence.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Duty of Department to administer and grade examinations, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

37-4-403. Issuance of certificate — fee. An applicant who successfully passes the examination prescribed by the board shall, on the payment of a fee prescribed by the board, be granted a license as a dental hygienist and shall be registered in a record kept by the department and shall receive a certificate, signed by the members of the board, in a form prescribed by the board.

History: En. Sec. 21, Ch. 48, L. 1935; re-en. Sec. 3115.21, R.C.M. 1935; amd. Sec. 9, Ch. 352, L. 1969; amd. Sec. 88, Ch. 350, L. 1974; R.C.M. 1947, 66-921(5); amd. Sec. 7, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "on the payment of a fee prescribed by the board" for "on the payment of a fee of $15".

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-4-404. Admission of dental hygienists from other states — reciprocity. (1) On the payment of a fee prescribed by the board and after satisfactory practical examination demonstrating his proficiency, a dental hygienist may be granted a license to practice dental hygiene in this state without being required to take an examination in theory if he:

(a) has been lawfully licensed to practice in another state or territory which has and maintains a standard for the practice of dental hygiene which, in the opinion of the board, is equal to that at the time maintained in this state;

(b) has been lawfully and continuously engaged in the practice of dental hygiene for a period of 1 year or more immediately before filing his application to practice in this state; and

(c) deposits in person with the department an attested certificate from the examining board of the state or territory in which he is registered or licensed, certifying to the fact of his registration and license and of his being a person of good moral character and of professional attainments.

(2) No license may be issued to the applicant without an examination in theory unless the state or territory from which the certificate has been granted extends a like privilege to engage in the practice of dental hygiene to dental hygienists licensed by this state who have moved to the other state.

(3) The board may enter into reciprocity agreements with other states or territories, the standards of which as to the practice of dental hygiene are, in the opinion of the board, equal to those of this state.

History: En. Sec. 23, Ch. 48, L. 1935; re-en. Sec. 3115.23, R.C.M. 1935; amd. Sec. 11, Ch. 352, L. 1969; amd. Sec. 90, Ch. 350, L. 1974; R.C.M. 1947, 66-923(1), (2), (4); amd. Sec. 8, Ch. 345, L. 1981; amd. Sec. 7, Ch. 349, L. 1983.

Compiler's Comments

1983 Amendment: In (2), deleted "Except as provided in subsection (3) of this section"; and deleted (3), which read: "A dental hygienist who has been lawfully licensed to practice in another state or territory not having reciprocity with this state but which has and maintains a standard for the practice of dental hygiene which, in the opinion of the board, is equal to that at the time maintained in this state and who deposits in person with the department an attested certificate from the examining board of the state or territory in which he is registered or licensed, certifying to the fact of his registration and license and his being a person of good moral character and of professional attainment, may, on the payment of a fee as prescribed by the board, be granted a temporary license authorizing the person to practice dental hygiene from the time of the granting of the license until the time of the next regular examination for dental hygiene set by the board. No additional fee for the examination may be charged."

1981 Amendment: Substituted "On the payment of a fee prescribed by the board" for "On the payment of a fee of $20" at the beginning of (1); and substituted "on the payment of a fee as prescribed by the board" for "on the payment of a fee of $20" near the end of (3) (now repealed).

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-4-405. Dental hygienist to practice under supervision of licensed dentist. (1) A licensed dental hygienist may practice in the office of a licensed and actively practicing dentist, in a public or private institution, under a board of health, or in a public clinic authorized by the board but may not practice except under the direct personal supervision of a licensed dentist; however, the dental hygienist may give instruction in oral hygiene without the supervision of a licensed dentist in a public or private institution or hospital or extended care facility or under a board of health or in a public clinic authorized by the board.

(2) The board may, in lieu of the direct supervision requirement set forth in subsection (1), permit a licensed dental hygienist to provide clinical dental hygiene services to a public or private institution, a hospital or extended care facility, or a school or public health program after a review of a request for such service and a description of the type of supervision necessary is made by the board. For the purposes of this section "supervision" is defined as follows:

(a) "direct supervision" means the supervision of those tasks and procedures that do not require the dentist in the room where performed but require his presence on the premises and availability for prompt consultation and treatment; and

(b) "general supervision" means those tasks and procedures that do not require the presence of a dentist on the premises but shall remain under the dentist's directive order, control, responsibility, and evaluation.

(3) Notwithstanding any other provisions of this section, a dental hygienist may continue performing tasks and procedures requiring direct supervision if:

(a) the supervising dentist required to be on the premises has been called out of the office briefly for an emergency; and

(b) both the hygienist and the patient consent.

History: En. Sec. 21, Ch. 48, L. 1935; re-en. Sec. 3115.21, R.C.M. 1935; amd. Sec. 9, Ch. 352, L. 1969; amd. Sec. 88, Ch. 350, L. 1974; R.C.M. 1947, 66-921(6); amd. Sec. 4, Ch. 493, L. 1979; amd. Sec. 9, Ch. 363, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (3).

37-4-406. Annual renewal fee — default — active, inactive status — continuing education — revocation of license — local fees prohibited. (1) Every licensed dental hygienist shall pay each year a renewal fee to the board. The renewal fee must be set by the board commensurate with costs. The renewal must be for either active or inactive status, as defined by rules of the board.

(2) Payment of the annual renewal fee must be made prior to March 1 of each year, and a license renewal must be issued by the department. A reasonable late fee is required if the annual renewal fee is not paid before March 1.

(3) The board may adopt rules governing requirements for demonstrating continued competency for license renewal.

(4) (a) The board may reclassify an active status license to inactive status for a licensee who furnishes satisfactory evidence that the licensee has discontinued the actual practice of dental hygiene because of physical disability or retirement.

(b) An individual who wishes to maintain a Montana license but does not maintain a resident practice must be licensed in the inactive status.

(c) Application to convert an inactive status license to an active status license must be made in accordance with rules of the board. The application to convert to active status must accompany the submission of the renewal fee prescribed for such license. If more than 1 year has passed since the license was inactivated, satisfactory evidence of competence must be submitted to the board before an active status license may be issued.

(5) In case of default in payment of the renewal fee by any licensee, the board must revoke the license.

(a) The board shall give the licensee 30 days' notice of its proposed revocation action. The notice must be sent by certified mail to the last-known address of the licensee and must contain a statement of the time and place of the meeting at which the revocation will be considered.

(b) The payment of the renewal fee on or before the time set for revocation, with a reasonable late fee set by the board, excuses the default.

(c) A license revoked for nonpayment of the renewal fee may be reinstated within 5 years of revocation if:

(i) renewal fees are paid for each year they were unpaid, plus a late penalty for each year;

(ii) the applicant produces evidence, satisfactory to the board, of good standing with the dental hygiene regulatory agencies of any jurisdiction in which the applicant has engaged in the active practice of dental hygiene since the last payment of a renewal fee under this chapter; and

(iii) the applicant produces evidence, satisfactory to the board, of good character and competence.

(6) Every dental hygienist shall give the board notice of any change in name, address, or status within 30 days of the change.

(7) The board may, after a hearing, revoke or suspend the license of a dental hygienist for violating this chapter.

(8) No unit of local government, including those exercising self-government powers, may impose a license fee on a dental hygienist licensed under this chapter.

History: En. Sec. 22, Ch. 48, L. 1935; re-en. Sec. 3115.22, R.C.M. 1935; amd. Sec. 10, Ch. 352, L. 1969; amd. Sec. 89, Ch. 350, L. 1974; R.C.M. 1947, 66-922; amd. Sec. 5, Ch. 337, L. 1979; amd. Sec. 9, Ch. 345, L. 1981; amd. Sec. 8, Ch. 349, L. 1983.

Compiler's Comments

1983 Amendment: Substantially revised and enlarged section, which formerly read: "(1) Before March 1 of each year, a licensed dental hygienist shall pay to the department a renewal fee set by the board. In default of payment, the board may, after hearing and on 30 days' notice, revoke the license of the hygienist in default; but the payment of the renewal fee on or before the time of hearing, with an additional sum set by the board excuses the default. The department may collect the fee by suit.

(2) The board may likewise revoke or suspend the license of a dental hygienist for violating this chapter."

1981 Amendment: Deleted ", not to exceed $25" after "a renewal fee set by the board" in the first sentence of (1); and deleted ", not to exceed $10," after "an additional sum set by the board" in the second sentence of (1).

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-4-407. Provisions not to apply to licensed dentist, physician, or surgeon. Nothing in this chapter relating to the practice of dental hygiene applies to its practice by a licensed dentist or a licensed physician and surgeon in this state.

History: En. Sec. 23, Ch. 48, L. 1935; re-en. Sec. 3115.23, R.C.M. 1935; amd. Sec. 11, Ch. 352, L. 1969; amd. Sec. 90, Ch. 350, L. 1974; R.C.M. 1947, 66-923(5).

Cross-References

Exemptions from physician's licensing requirements, 37-3-103.

37-4-408. Auxiliary personnel — employment, duties, and limitations. The board may, within the limitations of this chapter, adopt rules which define the qualifications and outline the tasks of any unlicensed auxiliary personnel to be employed by any licensed dentist in his office, except that nothing herein shall be construed to allow the board by rule to provide for delegation by a licensed dentist to any such auxiliary personnel any of the duties prohibited to dental hygienists under 37-4-401 or a prophylaxis. The performance of intraoral tasks by all dental auxiliaries, as permitted by board rules, shall be under the direct supervision of the licensed dentist employing such personnel.

History: En. Sec. 66-923.1 by Sec. 12, Ch. 352, L. 1969; R.C.M. 1947, 66-923.1; amd. Sec. 9, Ch. 349, L. 1983.

Compiler's Comments

1983 Amendment: Changed "shall" to "may" at beginning and in last sentence inserted "all".

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 5

Regulatory Provisions

Part Cross-References

Montana Unfair Trade Practices and Consumer Protection Act of 1973, Title 30, ch. 14, part 1.

37-4-501. Work order for construction or repair of appliances. (1) A licensed dentist who employs or engages the services of a person, firm, or corporation to construct, reproduce, make, alter, or repair bridges, crowns, dentures, other prosthetic appliances, surgical appliances, or orthodontic appliances shall furnish the person, firm, or corporation with a written work authorization on forms prescribed by the board which shall contain:

(a) the name and address of the person, firm, or corporation to which the work authorization is directed;

(b) the patient's name or identification number, but if only a number is used the patient's name shall be written on the duplicate copy of the work authorization retained by the dentist;

(c) the date on which the work authorization was written;

(d) a description of the work to be done, including diagrams if necessary;

(e) a specification of the type and quality of the materials to be used; and

(f) the signature of the dentist and the number of his license to practice dentistry.

(2) The person, firm, or corporation receiving a work authorization from a licensed dentist shall retain the original work authorization and the dentist shall retain the duplicate copy for inspection at a reasonable time by the board for a period of 2 years from date of issuance.

History: En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; R.C.M. 1947, 66-910(3).

37-4-502. Restrictions on advertising and solicitation. No person, firm, or corporation engaged in the business of constructing, altering, or repairing bridges, crowns, dentures, other prosthetic appliances, surgical appliances, or orthodontic appliances may advertise the services, technique, or materials to the general public by means of advertisements in public newspapers, magazines, or by radio, television, display advertisements, or by any other means except advertisements in professional or trade papers, trade journals, trade directories, trade periodicals, trade magazines, and listings in business and telephone directories limited to name, address, and telephone number, which may not occupy more than the number of lines necessary to disclose the information; nor may a person, firm, or corporation so engaged in any way directly solicit the patronage of the general public.

History: En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; R.C.M. 1947, 66-910(5).

37-4-503. Identification of dentures. All nonmetal full dentures shall be permanently identified with the first and last name of the owner at the time of processing the dentures.

History: En. Sec. 5, Ch. 493, L. 1979.

37-4-504 through 37-4-510 reserved.

37-4-511. Limitations on the administration of general anesthetics and practices involving general anesthesia. (1) No person engaged in the practice of dentistry or oral surgery may perform any dental or surgical procedure upon another person if a general anesthetic is administered unless such anesthetic is administered and monitored by:

(a) an anesthesiologist licensed to practice medicine by the state board of medical examiners;

(b) a nurse anesthetist recognized in that specialty by the state board of nursing; or

(c) another health professional who has received at least 1 year of postgraduate training in the administration of general anesthesia.

(2) No person engaged in the practice of dentistry or oral surgery may conduct any dental or surgical procedure upon another person under full general anesthesia unless the vital signs of the patient are continually monitored by another health professional who meets the qualifications for an anesthesiologist, nurse anesthetist, or other trained health professional as provided for in subsection (1).

(3) No person engaged in the practice of dentistry or oral surgery may conduct any dental or surgical procedure upon another person under light general anesthesia unless the vital signs of the patient are continually monitored by another person who has been examined by the board or its agent in life support skills and demonstrated a satisfactory level of proficiency as established by the board.

(4) No person engaged in the practice of dentistry or oral surgery may administer a general anesthetic to any other person unless he satisfies the requirements for a person qualified to administer a general anesthetic, as provided in subsection (1), and meets any additional standards established by the board of dentistry for training in the administration of general anesthesia and in the treatment of the complications thereof. This subsection does not affect the requirements for monitoring of vital signs by another health professional under subsection (2) or (3).

(5) The facility in which general anesthesia is to be administered as part of a dental or surgical procedure must be equipped with proper drugs and equipment to safely administer anesthetic agents, to monitor the well-being of the patient under general anesthesia, and to treat the complications that may arise from general anesthesia.

History: En. Sec. 2, Ch. 518, L. 1985.

CHAPTER 5

OSTEOPATHY

Part 1 — General

Section

37-5-101. Definitions — practice of osteopathy.
37-5-102. Osteopathy not practice of medicine.

Part 2 — Board of Osteopathic Physicians (Repealed. Sec. 6, Ch. 87, L. 1981)

Part 3 — Licensing

37-5-301. Qualifications for licensure — application — reexamination.
37-5-302. Examination — examination fee.
37-5-303. Reciprocity.
37-5-304. Temporary certificates.
37-5-305. Limitations on certificate — prescribing drugs — surgery.
37-5-306. Repealed.
37-5-307. Renewal fee.
37-5-308 through 37-5-310 reserved.
37-5-311. Revocation of certificate.
37-5-312. Penalty for practicing osteopathy without a license.

Chapter Cross-References

Doctor-patient privilege, 26-1-805.

Professional service corporations, Title 35, ch. 4.

General provisions relating to health care practitioners, Title 37, ch. 2.

Validity of consent to medical treatment, Title 41, ch. 1, part 4.

Osteopaths to report child abuse, 41-3-201.

Health care information, Title 50, ch. 16.

Part 1

General

37-5-101. Definitions — practice of osteopathy. (1) Unless the context requires otherwise, in this chapter the following definitions apply:

(a) "Board" means the board of medical examiners provided for in 2-15-1841.

(b) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(2) Every person is "practicing osteopathy" within the meaning of this chapter who:

(a) appends to or uses in connection with his or her name the words "doctor of osteopathy, diplomate of osteopathy, osteopath, osteopathist, osteopathic practitioner, osteopathic physician", or words of like import or any abbreviation thereof or the letters "D.O."; or

(b) professes publicly to or who, either on his own behalf, in his own name or in his trade name, or in behalf of any other person, corporation, association, partnership (as manager, bookkeeper, practitioner, or agent), treats, cures, alleviates, or relieves any ailment or disease of either mind or body or cures or relieves any fracture or misplacement or abnormal condition or bodily injury or deformity by any treatment or manipulation or method of manipulating a human body or any of its limbs, muscles, or parts by the use of the hands or mechanical appliances in an effort or attempt to relieve any pressure, obstruction, misplacement, or defect in any bone, muscle, ligament, nerve, vessel, organ, or part of the body, after having received or with the intent or expectation of receiving therefor, either directly or indirectly, any bonus, gift, or compensation whatsoever; provided, however, that nothing in this section restrains or restricts any legally licensed physician or surgeon in the practice of his profession.

History: (1)En. 66-1401.1 by Sec. 141, Ch. 350, L. 1974; Sec. 66-1401.1, R.C.M. 1947; (2)En. Sec. 12, Ch. 51, L. 1905; amd. Sec. 2, Ch. 112, L. 1907; re-en. Sec. 1605, Rev. C. 1907; re-en. Sec. 3136, R.C.M. 1921; re-en. Sec. 3136, R.C.M. 1935; Sec. 66-1412, R.C.M. 1947; R.C.M. 1947, 66-1401.1, 66-1412; amd. Sec. 4, Ch. 22, L. 1979; amd. Sec. 1, Ch. 87, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "board of medical examiners" for "board of osteopathic physicians" and added the correct citation in (1)(a).

Cross-References

Chiropractic not practice of osteopathy, 37-12-102.

37-5-102. Osteopathy not practice of medicine. The system, method, or science of treating diseases of the human body commonly known as osteopathy is not the practice of medicine or surgery within the meaning of chapter 3, parts 1 through 3, and is not subject to the provisions of those parts.

History: En. Sec. 11, p. 51, L. 1901; rep. and re-en. Sec. 13, Ch. 51, L. 1905; re-en. Sec. 1606, Rev. C. 1907; re-en. Sec. 3137, R.C.M. 1921; re-en. Sec. 3137, R.C.M. 1935; amd. Sec. 7, Ch. 101, L. 1977; R.C.M. 1947, 66-1413; amd. Sec. 5, Ch. 22, L. 1979.

Cross-References

Exemptions from physician's licensing requirements, 37-3-103.

Part 2

Board of Osteopathic Physicians (Repealed. Sec. 6, Ch. 87, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

37-5-201. En. Sec. 2, p. 48, L. 1901; rep. and re-en. Sec. 2, Ch. 51, L. 1905; re-en. Sec. 1595, Rev. C. 1907; re-en. Sec. 3126, R.C.M. 1921; re-en. Sec. 3126, R.C.M. 1935; amd. Sec. 142, Ch. 350, L. 1974; R.C.M. 1947, 66-1402.

37-5-202. En. Sec. 10, p. 51, L. 1901; rep. and re-en. Sec. 10, Ch. 51, L. 1905; re-en. Sec. 1603, Rev. C. 1907; re-en. Sec. 3134, R.C.M. 1921; re-en. Sec. 3134, R.C.M. 1935; amd. Sec. 146, Ch. 147, L. 1963; amd. Sec. 2, Ch. 206, L. 1967; amd. Sec. 24, Ch. 93, L. 1969; amd. Sec. 146, Ch. 350, L. 1974; amd. Sec. 33, Ch. 439, L. 1975; R.C.M. 1947, 66-1410; amd. Sec. 10, Ch. 474, L. 1981.

Part Cross-References

Board of Medical Examiners, Title 37, ch. 3, part 2.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Licensing of doctors of osteopathy, 37-3-306.

Nondiscrimination in licensing, 49-3-204.

37-5-301. Qualifications for licensure — application — reexamination. (1) It is unlawful for a person to practice osteopathy in this state without a license from the department. An applicant applying for licensure shall be a person of good moral character. An applicant shall present evidence to the board that he has completed the following educational and professional requirements:

(a) 4 years of high school or its scholastic equivalent;

(b) at least 2 years' preprofessional college education in an accredited college or university; and

(c) 4 years' professional education in an osteopathic college conforming to the minimum educational standards for osteopathic colleges established by the American osteopathic association and which is approved by the board.

(2) Application shall be made on forms prescribed by the board and furnished by the department.

(3) An applicant who fails the examination is entitled to a second examination without charge.

History: En. Sec. 3, p. 49, L. 1901; rep. and re-en. Sec. 3, Ch. 51, L. 1905; re-en. Sec. 1956, Rev. C. 1907; amd. Sec. 1, Ch. 124, L. 1919; re-en. Sec. 3127, R.C.M. 1921; amd. Sec. 1, Ch. 79, L. 1925; re-en. Sec. 3127, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1953; amd. Sec. 1, Ch. 206, L. 1967; amd. Sec. 143, Ch. 350, L. 1974; R.C.M. 1947, 66-1403(1).

Cross-References

Standardized forms, 37-1-104.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

37-5-302. Examination — examination fee. (1) A person commencing the practice of osteopathy in this state, in any of its branches, shall apply to the department for a license to do so, and the applicant, at the time and place designated by the board, shall submit to an examination in the following subjects: anatomy, physiology, chemistry, pathology, bacteriology, gynecology, obstetrics, and theory and practice of osteopathy and other subjects taught in well-regulated and recognized schools of osteopathy and considered advisable by the board and shall present evidence of having actually attended, as required in 37-5-301, a legally authorized and regularly conducted school of osteopathy recognized by the board.

(2) Examination papers on subjects peculiar to osteopathy shall be graded by the department, subject to 37-1-101. The examination shall be scientific and practical, but of sufficient severity to test the candidate's fitness to practice osteopathy.

(3) After examination the department shall issue a license to practice osteopathy in this state to applicants who pass the examination, which license shall be granted by not less than two members of the board, attested by the board's seal.

(4) The fee for the examination and license shall be prescribed by the board.

History: En. Sec. 5, p. 49, L. 1901; rep. and re-en. Sec. 5, Ch. 51, L. 1905; re-en. Sec. 1598, Rev. C. 1907; re-en. Sec. 3129, R.C.M. 1921; re-en. Sec. 3129, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1953; amd. Sec. 145, Ch. 147, L. 1963; amd. Sec. 145, Ch. 350, L. 1974; R.C.M. 1947, 66-1405; amd. Sec. 2, Ch. 87, L. 1981; amd. Sec. 10, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 87 deleted "except as otherwise provided in 37-5-201" at the end of (1).

Chapter 345 substituted subsection (4) for "(4) The fee for the examination and license is $20."

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-5-303. Reciprocity. A graduate of a reputable school of osteopathy who has been strictly examined and licensed to practice osteopathy in another state may be licensed to practice osteopathy in this state on production to the board of his diploma and the license obtained in the other state and satisfactory evidence of good moral character, and the payment of fees required of other applicants; but the board may have the applicant examined as to his qualifications.

History: En. Sec. 11, Ch. 51, L. 1905; re-en. Sec. 1604, Rev. C. 1907; re-en. Sec. 3135, R.C.M. 1921; re-en. Sec. 3135, R.C.M. 1935; amd. Sec. 147, Ch. 350, L. 1974; R.C.M. 1947, 66-1411.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-5-304. Temporary certificates. The secretary of the board may authorize the department, upon examination, to issue a certificate to an applicant to practice osteopathy until the next meeting of the board when he shall report the facts, at which time the temporary certificate expires, but the temporary certificate may not be issued after the board has once rejected the applicant.

History: En. Sec. 4, p. 49, L. 1901; rep. and re-en. Sec. 4, Ch. 51, L. 1905; re-en. Sec. 1597, Rev. C. 1907; re-en. Sec. 3128, R.C.M. 1921; re-en. Sec. 3128, R.C.M. 1935; amd. Sec. 144, Ch. 350, L. 1974; R.C.M. 1947, 66-1404.

37-5-305. Limitations on certificate — prescribing drugs — surgery. The certificates provided for in this chapter do not authorize the holders thereof to prescribe or use drugs in the practice of osteopathy or to perform major or operative surgery. A person holding a certificate under this chapter who prescribes or uses drugs in the practice of osteopathy or who performs major or operative surgery is guilty of a misdemeanor, provided that nothing in this chapter may be construed to prohibit any legalized osteopath in this state from practicing major or operative surgery after having passed a satisfactory examination in surgery before the Montana board of medical examiners.

History: En. Sec. 6, p. 50, L. 1901; rep. and re-en. Sec. 6, Ch. 51, L. 1905; re-en. Sec. 1599, Rev. C. 1907; re-en. Sec. 3130, R.C.M. 1921; re-en. Sec. 3130, R.C.M. 1935; amd. Sec. 6, Ch. 101, L. 1977; R.C.M. 1947, 66-1406.

Cross-References

Licensing of physicians, Title 37, ch. 3, part 3.

Penalty when no penalty specified, 46-18-212.

37-5-306. Repealed. Sec. 4, Ch. 66, L. 1981.

History: En. Sec. 7, p. 50, L. 1901; rep. and re-en. Sec. 7, Ch. 51, L. 1905; re-en. Sec. 1600, Rev. C. 1907; re-en. Sec. 3131, R.C.M. 1921; re-en. Sec. 3131, R.C.M. 1935; R.C.M. 1947, 66-1407.

37-5-307. Renewal fee. (1) A person holding a certificate to practice under this chapter and who is in active practice in this state shall before April 1 of each year pay a renewal fee prescribed by the board to the department, and a person holding a certificate to practice under this chapter who is not in active practice shall before April 1 of each year pay a renewal fee prescribed by the board to the department. The department shall before March 15 of each year send a notice to each person holding a valid certificate to practice under this chapter and from whom a fee is due stating that the fee is due.

(2) The certificate to practice under this chapter automatically becomes void when the renewal fee is not paid at the time named. However, the board may reinstate a practitioner whose certificate has lapsed on payment of back renewal fees or on payment of a maximum fee prescribed by the board if the lapsed fees exceed the maximum fee.

History: En. Sec. 3, p. 49, L. 1901; rep. and re-en. Sec. 3, Ch. 51, L. 1905; re-en. Sec. 1956, Rev. C. 1907; amd. Sec. 1, Ch. 124, L. 1919; re-en. Sec. 3127, R.C.M. 1921; amd. Sec. 1, Ch. 79, L. 1925; re-en. Sec. 3127, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1953; amd. Sec. 1, Ch. 206, L. 1967; amd. Sec. 143, Ch. 350, L. 1974; R.C.M. 1947, 66-1403(2), (3); amd. Sec. 11, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "before April 1 of each year pay a renewal fee prescribed by the board" for "before April 1 of each year pay a renewal fee of $15" in the first sentence of (1); substituted "before April 1 of each year pay a renewal fee prescribed by the board" for "before April 1 of each year pay a renewal fee of $7.50" near the end of the first sentence of (1); substituted "on payment of a maximum fee prescribed by the board" for "on payment of $50" in the second sentence of (2); and substituted "if the lapsed fees exceed the maximum fee" for "if the lapsed fees exceed that amount" at the end of (2).

Cross-References

Suspension of licensing fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-5-308 through 37-5-310 reserved.

37-5-311. Revocation of certificate. Any such certificate may be revoked by said board upon satisfactory proof of fraud or misrepresentation in procuring the same or for any violation of the provisions of this chapter or any gross immorality by the holder of such certificate.

History: En. Sec. 9, p. 51, L. 1901; rep. and re-en. Sec. 9, Ch. 51, L. 1905; re-en. Sec. 1602, Rev. C. 1907; re-en. Sec. 3133, R.C.M. 1921; re-en. Sec. 3133, R.C.M. 1935; R.C.M. 1947, 66-1409.

Cross-References

Contested case procedure applicable to license revocation, 2-4-102.

Reporting disciplinary actions against licensees, 37-1-105.

Disciplinary authority of boards — injunctions, 37-1-136.

37-5-312. Penalty for practicing osteopathy without a license. Any person practicing osteopathy in this state without first obtaining a license herein provided for or contrary to the provisions of this chapter or who, for the purpose of obtaining such license, shall falsely represent himself or herself to be the holder of a diploma as herein provided shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000 or less than $250 or by imprisonment in the county jail not exceeding 1 year or less than 90 days or by both fine and imprisonment for each and every such offense. It shall be the duty of the respective county attorneys to prosecute violations of this chapter.

History: En. Sec. 8, p. 51, L. 1901; rep. and re-en. Sec. 8, Ch. 51, L. 1905; amd. Sec. 1, Ch. 112, L. 1907; re-en. Sec. 1601, Rev. C. 1907; re-en. Sec. 3132, R.C.M. 1921; re-en. Sec. 3132, R.C.M. 1935; R.C.M. 1947, 66-1408.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

CHAPTER 6

PODIATRY

Part 1 — General

Section

37-6-101. Definitions.
37-6-102. Limitation on practice.
37-6-103. Application of chapter.
37-6-104. Construction of chapter.
37-6-105. Administration of drugs.

Part 2 — Board of Podiatry Examiners

37-6-201. Repealed.

Part 3 — Licensing

37-6-301. License required for practice.
37-6-302. Qualifications for licensure — exemptions from examination.
37-6-303. Examination — subjects — fees — reexamination.
37-6-304. Designations on license — recording — annual renewal fee — display.
37-6-305. Deposit of moneys collected.
37-6-306 through 37-6-310 reserved.
37-6-311. Refusal or revocation of license.
37-6-312. Penalty.

Chapter Cross-References

Professional service corporations, Title 35, ch. 4.

General provisions relating to health care practitioners, Title 37, ch. 2.

Podiatrists to report child abuse, 41-3-201.

Health care information, Title 50, ch. 16.

Part 1

General

Part Cross-References

Duty of podiatrist to report violation of Montana Elder Abuse Prevention Act, 53-5-511.

37-6-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Chiropody" or "podiatry" means the diagnosis, medical, surgical, mechanical, manipulative, and electrical treatment of ailments of the human foot.

(2) "Podiatrist" means one practicing podiatry.

(3) "Board" means the board of medical examiners provided for in 2-15-1841.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

History: En. Sec. 1, Ch. 2, L. 1923; re-en. Sec. 3154.1, R.C.M. 1935; amd. Sec. 1, Ch. 218, L. 1939; amd. Sec. 55, Ch. 350, L. 1974; R.C.M. 1947, 66-601; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 2, Ch. 470, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 274 substituted "department of commerce" for "department of professional and occupational licensing" in (4); changed internal references to the department and the board.

Chapter 470, in (3), substituted reference to the board of medical examiners for reference to the board of podiatry examiners.

37-6-102. Limitation on practice. A podiatrist may not amputate the human foot or toe or administer an anesthetic other than local.

History: En. Sec. 2, Ch. 2, L. 1923; re-en. Sec. 3154.2, R.C.M. 1935; amd. Sec. 2, Ch. 218, L. 1939; amd. Sec. 56, Ch. 350, L. 1974; R.C.M. 1947, 66-602(part).

37-6-103. Application of chapter. This chapter shall not apply to any physician licensed to practice his profession in this state or to surgeons of the United States army, navy, and/or public health service when in actual performance of their duties.

History: En. Sec. 10, Ch. 2, L. 1923; re-en. Sec. 3154.10, R.C.M. 1935; amd. Sec. 7, Ch. 218, L. 1939; R.C.M. 1947, 66-610.

Cross-References

Exemptions from physician's licensing requirements, 37-3-103.

37-6-104. Construction of chapter. Nothing in this chapter shall be construed as prohibiting the fitting, recommending, advertising, adjusting, or sale of corrective shoes, arch supports, or similar mechanical appliances, or foot remedies by retail dealers or manufacturers.

History: En. Sec. 8, Ch. 218, L. 1939; R.C.M. 1947, 66-611.

37-6-105. Administration of drugs. A licensed podiatrist may administer and prescribe drugs in accordance with 37-2-101 as a "medical practitioner".

History: En. Sec. 3, Ch. 470, L. 1981.

Cross-References

Dispensing of drugs, Title 37, ch. 2, part 1.

Regulation of prescriptions, Title 37, ch. 7, part 4.

Drug product selection, Title 37, ch. 7, part 5.

Dangerous drugs, Title 45, ch. 9.

Controlled substances, Title 50, ch. 32.

Part 2

Board of Podiatry Examiners

Part Cross-References

Board of Medical Examiners, Title 37, ch. 3, part 2.

37-6-201. Repealed. Sec. 10, Ch. 470, L. 1981.

History: En. Sec. 8, Ch. 2, L. 1923; re-en. Sec. 3154.8, R.C.M. 1935; amd. Sec. 132, Ch. 147, L. 1963; amd. Sec. 62, Ch. 350, L. 1974; amd. Sec. 27, Ch. 439, L. 1975; amd. Sec. 3, Ch. 176, L. 1977; R.C.M. 1947, 66-608; amd. Sec. 11, Ch. 474, L. 1981.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-6-301. License required for practice. It is unlawful for a person to profess to be a podiatrist, to practice or assume the duties incident to podiatry, or to advertise in any form or hold himself out to the public as a chiropodist or podiatrist, or in a sign or advertisement to use the word chiropodist or podiatrist, foot correctionist, or any other term, terms, or letters indicating to the public that he is holding himself out as a podiatrist or foot correctionist in any manner, without first obtaining from the board a license authorizing the practice of podiatry in this state, except under this chapter.

History: En. Sec. 2, Ch. 2, L. 1923; re-en. Sec. 3154.2, R.C.M. 1935; amd. Sec. 2, Ch. 218, L. 1939; amd. Sec. 56, Ch. 350, L. 1974; R.C.M. 1947, 66-602(part).

37-6-302. Qualifications for licensure — exemptions from examination. (1) Examinations shall be held at places and times the board directs. Persons who wish to begin the practice of podiatry in this state shall make application, on a form authorized by the board and furnished by the department, for a license to practice podiatry. The license may be granted to applicants after they have furnished satisfactory proof of good moral character, of having attained high school graduation or its equivalent, of having at least 4 years or equivalent time in quarter or semester hours of instruction in an accredited college of podiatry recognized as being in good standing by the board and have successfully passed the examination.

(2) A license without written examination may be granted to podiatrists of other states maintaining equal statutory requirements for the practice of podiatry and extending the same reciprocal privilege to this state if they have had a valid license and practiced for at least 2 preceding years in that state prior to filing for reciprocal privilege and by payment of a fee prescribed by the board to the department.

(3) A license may be granted, at the discretion of the board and upon payment of a fee prescribed by the board to the department, if the applicant has successfully completed the national podiatry board examination and after a personal interview by the board.

History: En. Sec. 3, Ch. 2, L. 1923; re-en. Sec. 3154.3, R.C.M. 1935; amd. Sec. 3, Ch. 218, L. 1939; amd. Sec. 131, Ch. 147, L. 1963; amd. Sec. 1, Ch. 168, L. 1971; amd. Sec. 1, Ch. 288, L. 1973; amd. Sec. 57, Ch. 350, L. 1974; amd. Sec. 1, Ch. 96, L. 1975; amd. Sec. 1, Ch. 176, L. 1977; R.C.M. 1947, 66-603; amd. Sec. 12, Ch. 345, L. 1981; amd. Sec. 4, Ch. 470, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 345 substituted "by payment of a fee prescribed by the board" for "by payment of $50" near the end of (2); and substituted "upon payment of a fee prescribed by the board" for "upon payment of $50" in (3).

Chapter 470 substituted "board" for "state board of podiatry examiners" in the second sentence of (1).

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

37-6-303. Examination — subjects — fees — reexamination. (1) A person not exempt from examination under 37-6-302 and desiring a license to practice podiatry shall be examined in the following subjects: anatomy, chemistry, dermatology, diagnosis, materia medica, pathology, physiology, therapeutics, clinical and orthopedic podiatry, histology, bacteriology, pharmacy, neurology, surgery (minor), podiatry, foot orthopedica, shoe therapy, physiotherapy, roentgenology, hygiene and sanitation, ethics, and culture, limited in their scope to the treatment of the human foot, and, if qualified, shall receive a license.

(2) An examination and license fee prescribed by the board shall be paid to the department.

(3) An applicant failing the examination and being refused a license is entitled within 6 months of the refusal to a reexamination, but one reexamination exhausts his privilege under the original examination.

History: En. Sec. 4, Ch. 2, L. 1923; re-en. Sec. 3154.4, R.C.M. 1935; amd. Sec. 4, Ch. 218, L. 1939; amd. Sec. 58, Ch. 350, L. 1974; R.C.M. 1947, 66-604; amd. Sec. 13, Ch. 345, L. 1981; amd. Sec. 5, Ch. 470, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 345 substituted "license fee prescribed by the board" for "license fee of $35" in (2).

Chapter 470 deleted the last sentence in (1) relating to the passing grade on examination.

Cross-References

Duty of Department to administer and grade examination, 37-1-101.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-6-304. Designations on license — recording — annual renewal fee — display. (1) A license issued under this chapter shall be designated as a "registered podiatrist's license" and may not contain any abbreviations thereof or any other designation or title, except that a statement of limitation shall be contained in the license referring to the licensee as a "registered podiatrist--practice limited to the foot" so as not to mislead the public with respect to his right to treat other portions of the body.

(2) Licenses shall be recorded by the department the same as other medical licenses.

(3) A license renewal fee set by the board shall be paid annually on July 1 of each year, and if not paid within 3 months, the license shall be revoked and may be reissued only on original application and payment of an additional fee prescribed by the board.

(4) Licenses shall be conspicuously displayed by podiatrists at their offices or other places of practice.

History: **En. Sec. 5, Ch. 2, L. 1923; re-en. Sec. 3154.5, R.C.M. 1935; amd. Sec. 5, Ch. 218, L. 1939; amd. Sec. 59, Ch. 350, L. 1974; amd. Sec. 3, Ch. 533, L. 1977; R.C.M. 1947, 66-605; amd. Sec. 2, Ch. 66, L. 1981; amd. Sec. 14, Ch. 345, L. 1981.**

Compiler's Comments

1981 Amendments: Chapter 66 deleted two sentences in (2) relating to recording the license with the county clerk.

Chapter 345 deleted "in an amount not to exceed $25" after "renewal fee set by the board" near the beginning of (3); and substituted "payment of an additional fee prescribed by the board" for "payment of a fee of $35" at the end of (3).

Cross-References

Prohibition on distribution or sale of mailing lists, 2-6-109.

Duties of County Clerk, 7-4-2611.

Fees of County Clerk, 7-4-2631.

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-6-305. Deposit of moneys collected. All fees shall be collected by the department and deposited in the state special revenue fund for the use of the state board of podiatry examiners, subject to 37-1-101(6).

History: **En. Sec. 7, Ch. 2, L. 1923; re-en. Sec. 3154.7, R.C.M. 1935; amd. Sec. 130, Ch. 147, L. 1963; amd. Sec. 61, Ch. 350, L. 1974; amd. Sec. 1, Ch. 101, L. 1977; amd. Sec. 2, Ch. 176, L. 1977; R.C.M. 1947, 66-607; amd. Sec. 1, Ch. 277, L. 1983.**

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

37-6-306 through 37-6-310 reserved.

37-6-311. Refusal or revocation of license. (1) After notice and opportunity for a hearing, the board may deny, revoke, or refuse to renew a license for any of the following causes:

(a) fraudulent representation in obtaining the license;

(b) incompetency in practice;

(c) use of untruthful or improbable statements to patients or in advertisements;

(d) habitual intoxication;

(e) unprofessional and immoral conduct; or

(f) selling or giving away alcohol or drugs for an illegal purpose.

(2) However, the board may authorize the department to grant or reissue such license after 6 months if in its judgment the act, acts, or conditions of disqualification have been remedied.

History: **En. Sec. 6, Ch. 2, L. 1923; re-en. Sec. 3154.6, R.C.M. 1935; amd. Sec. 6, Ch. 218, L. 1939; amd. Sec. 60, Ch. 350, L. 1974; R.C.M. 1947, 66-606; amd. Sec. 6, Ch. 22, L. 1979.**

Cross-References

Application of contested case procedure to denial of license, 2-4-631.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunction, 37-1-136.

37-6-312. Penalty. Any person who shall knowingly violate any of the provisions of this chapter is guilty of a misdemeanor and on conviction shall be fined not less than $250 or more than $1,000 or imprisoned in the county jail for not less than 90 days or more than 1 year, or both fined and imprisoned.

History: En. Sec. 9, Ch. 2, L. 1923; re-en. Sec. 3154.9, R.C.M. 1935; R.C.M. 1947, 66-609; amd. Sec. 6, Ch. 470, L. 1981.

Compiler's Comments

1981 Amendment: Substituted the penalty language after "this chapter" for "... and upon conviction thereof, shall be fined the sum not exceeding $1,000 or be imprisoned in the county jail not to exceed 2 years, or both".

CHAPTER 7

PHARMACY

Part 1 — General

Section

37-7-101. Definitions.
37-7-102. Practice subject to regulation.
37-7-103. Exemptions.
37-7-104. Qualifications of employee hired to assist board.

Part 2 — Board of Pharmacy

37-7-201. Organization — powers and duties.
37-7-202. Salaries and expenses of board members.
37-7-203. Attorney general as board attorney — county attorney to prosecute — investigative powers of board, department, and prosecutors.

Part 3 — Licensing

37-7-301. Sale of drugs or medicines unlawful except as provided.
37-7-302. Examination — qualifications — fees — reciprocity.
37-7-303. Annual renewal fee.
37-7-304. Continuing education required.
37-7-305. Continuing education rules.
37-7-306 through 37-7-310 reserved.
37-7-311. Revocation of license issued to pharmacist or intern.
37-7-312 through 37-7-320 reserved.
37-7-321. Certified pharmacy license — suspension or revocation.
37-7-322. Use of words pharmacy, apothecary, or chemist shop for advertising.
37-7-323. Penalty.
37-7-324. Deposit of fees and fines.

Part 4 — Prescriptions Regulated—Poisons

37-7-401. Restrictions upon sale or prescription of opiates — coding prohibited — refilling prescriptions.
37-7-402. Penalty for violation of provisions on sale or prescription of opiates, coding, refilling.
37-7-403. Repealed.
37-7-404. Repealed.

37-7-405. Repealed.

Part 5 — Drug Product Selection

37-7-501. Short title.
37-7-502. Definitions.
37-7-503. Rulemaking.
37-7-504. General prohibition of drug substitution.
37-7-505. Product selection permitted — limitation.
37-7-506. Notice to purchaser.
37-7-507. Savings passed on.
37-7-508. Product selection not practice of medicine.
37-7-509. Limitations on liability.
37-7-510. Penalty.

Chapter Cross-References

Professional service corporations, Title 35, ch. 4.

General provisions relating to health care practitioners, Title 37, ch. 2.

Use of diagnostic drugs by optometrist not prohibited, 37-10-103.

Dangerous drugs, Title 45, ch. 9.

Controlled substances, Title 50, ch. 32.

Part 1

General

37-7-101. Definitions. Unless the context requires otherwise, in parts 1 through 3 of this chapter the following definitions apply:

(1) "Board" means the board of pharmacy provided for in 2-15-1843.

(2) "Chemical" means medicinal or industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

(3) "Commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.

(4) "Continuing education" means professional pharmaceutical postgraduate education in the following areas:

(a) the socioeconomic and legal aspects of health care;

(b) the properties and actions of drugs and dosage forms; and

(c) the etiology, characteristics, and therapeutics of the disease state.

(5) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(6) (a) "Drug" means:

(i) articles recognized in the official United States Pharmacopoeia/National Formulary or a supplement to them;

(ii) articles intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(iii) articles (other than food) intended to affect the structure or function of the body of man or other animals; and

(iv) articles intended for use as a component of an article specified in subsection (i), (ii), or (iii).

(b) "Drug" does not include devices or their components, parts, or accessories.

(7) "Intern" means a natural person licensed by the department to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons under the supervision of a registered and licensed pharmacist.

(8) "Medicine" means a remedial agent which has the property of curing, preventing, treating, or mitigating diseases or which is used for this purpose.

(9) "Person" includes an individual, partnership, corporation, or association.

(10) "Pharmacist" means a natural person licensed by the department to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons and who may affix to his name the term "R.Ph.".

(11) "Pharmacy" means an established place registered by the department of commerce in which prescriptions, drugs requiring a prescription, medicines, chemicals, and poisons are compounded, dispensed, vended, or sold.

(12) "Poison" means a substance which, when introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes or which destroys living tissue with which it comes in contact.

(13) "Prescription" means an order given individually for the person for whom prescribed, directly from the prescriber to the furnisher or indirectly to the furnisher, by means of an order signed by the prescriber and bearing the name and address of the prescriber, his license classification, the name of the patient, the name and the quantity of the drug or drugs prescribed, the directions for use and the date of its issue. These stipulations apply to both written and telephoned prescriptions.

(14) "Wholesale" means a sale for the purpose of resale.

History: En. Sec. 2, Ch. 175, L. 1939; amd. Sec. 1, Ch. 33, L. 1951; amd. Sec. 2, Ch. 241, L. 1971; amd. Sec. 148, Ch. 350, L. 1974; amd. Sec. 1, Ch. 439, L. 1977; R.C.M. 1947, 66-1502; amd. Sec. 7, Ch. 22, L. 1979; amd. Sec. 3, Ch. 379, L. 1981; amd. Sec. 1, Ch. 247, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted "board of pharmacy" for "board of pharmacists".

1981 Amendments: Chapter 274 substituted "department of commerce" for "department of professional and occupational licensing" in (5) and (11); changed internal references to the department and the board.

Chapter 379 deleted a reference to the official Homeopathic Pharmacopoeia of the United States from (6)(i); substituted "under the supervision of a registered and licensed pharmacist" for "in a pharmacy having a pharmacist in charge" at the end of (7); deleted the reference to drugstore in the definition of pharmacy in (11); inserted "requiring a prescription" after "drugs" in (11); deleted "at retail" from the end of (11).

37-7-102. Practice subject to regulation. The practice of pharmacy is a professional practice affecting the public health, safety, and welfare and is subject to regulation and control in the public interest.

History: En. Sec. 647, Pol. C. 1895; re-en. Sec. 1629, Rev. C. 1907; re-en. Sec. 8, Ch. 134, L. 1915; re-en. Sec. 3177, R.C.M. 1921; re-en. Sec. 3177, R.C.M. 1935; amd. Sec. 7, Ch. 175, L. 1939; amd. Sec. 1, Ch. 70, L. 1957; amd. Sec. 5, Ch. 241, L. 1971; amd. Sec. 153, Ch. 350, L. 1974; amd. Sec. 2, Ch. 439, L. 1977; R.C.M. 1947, 66-1507(part).

37-7-103. Exemptions. Subject only to 37-7-401 and 37-7-402:

(1) nothing in this chapter subjects a person duly licensed in this state to practice medicine, dentistry, or veterinary medicine to inspection by the board or prevents such person from compounding or using drugs, medicines, chemicals, or poisons in his practice or prevents one duly licensed to practice medicine from furnishing to a patient such drugs, medicines, chemicals, or poisons as he considers proper in the treatment of such patient;

(2) nothing herein prevents the sale of drugs, medicines, chemicals, or poisons at wholesale;

(3) nothing herein prevents the sale of drugs, chemicals, or poisons either at wholesale or retail for use for commercial purposes or in the arts or changes any of the provisions of this code relating to the sale of insecticides and fungicides, and nothing in this chapter prevents the sale of common household preparations and other drugs, provided stores selling them are licensed under the terms of this chapter;

(4) nothing herein applies to or may interfere with manufacture, wholesaling, vending, or retailing of flavoring extracts, toilet articles, cosmetics, perfumes, spices, and other commonly used household articles of a chemical nature for use for nonmedicinal purposes.

History: En. Sec. 14, Ch. 175, L. 1939; amd. Sec. 10, Ch. 101, L. 1977; R.C.M. 1947, 66-1525.

Cross-References

Licensing of physicians, Title 37, ch. 3, part 3.

Licensing of dentists, Title 37, ch. 4, part 3.

Licensing — veterinary medicine, Title 37, ch. 18, part 3.

Pesticides, Title 80, ch. 8.

37-7-104. Qualifications of employee hired to assist board. A person hired by the department to enter and inspect an establishment under this chapter; to examine the books of a manufacturer, druggist, storekeeper, wholesaler, pharmacist, or intern; to assist in a prosecution under this chapter; and to assist the board in supervising internships, reciprocity agreements, professional correspondence, and examinations shall be:

(1) a citizen of the United States and a resident of this state; and

(2) a pharmacist registered under this chapter, with at least 5 years of practical experience.

History: En. 66-1521.1 by Sec. 158, Ch. 350, L. 1974; R.C.M. 1947, 66-1521.1; amd. Sec. 8, Ch. 22, L. 1979.

Cross-References

Duties of Department, 37-1-101.

Part 2

Board of Pharmacy

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1843.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-7-201. Organization — powers and duties. (1) The board shall meet at least once a year to transact its business. The board shall annually elect from its members a president, vice-president, and secretary.

(2) The board shall:

(a) regulate the practice of pharmacy in this state subject to this chapter;

(b) determine the minimum equipment necessary in and for a pharmacy;

(c) regulate, under therapeutic classification, the sale of drugs, medicines, chemicals, and poisons and their labeling;

(d) regulate the quality of drugs and medicines dispensed in this state, using the United States Pharmacopoeia/National Formulary or revisions thereof as the standards;

(e) request the department to enter and inspect, at reasonable times, places where drugs, medicines, chemicals, or poisons are sold, vended, given away, compounded, dispensed, or manufactured. It is a misdemeanor for a person to refuse to permit or otherwise prevent the department from entering these places and making an inspection.

(f) regulate the practice of interns under national standards;

(g) make rules for the conduct of its business;

(h) perform other duties and exercise other powers as this chapter requires;

(i) adopt and authorize the department to publish rules for carrying out and enforcing parts 1 through 3 of this chapter.

(3) The department shall:

(a) license, register, and examine, subject to 37-1-101, applicants whom the board considers qualified under this chapter;

(b) license pharmacies and certain stores under this chapter; and

(c) issue certificates of "certified pharmacy" under this chapter.

History: Ap. p. Sec. 644, Pol. C. 1895; re-en. Sec. 1626, Rev. C. 1907; re-en. Sec. 5, Ch. 134, L. 1915; re-en. Sec. 3174, R.C.M. 1921; re-en. Sec. 3174, R.C.M. 1935; amd. Sec. 4, Ch. 175, L. 1939; amd. Sec. 25, Ch. 93, L. 1969; amd. Sec. 3, Ch. 241, L. 1971; amd. Sec. 150, Ch. 350, L. 1974; Sec. 66-1504, R.C.M. 1947; Ap. p. Sec. 646, Pol. C. 1895; re-en. Sec. 1628, Rev. C. 1907; re-en. Sec. 7, Ch. 134, L. 1915; re-en. Sec. 3176, R.C.M. 1921; re-en. Sec. 3176, R.C.M. 1935; amd. Sec. 6, Ch. 175, L. 1939; amd. Sec. 1, Ch. 81, L. 1969; amd. Sec. 4, Ch. 168, L. 1971; amd. Sec. 4, Ch. 241, L. 1971; amd. Sec. 1, Ch. 71, L. 1974; amd. Sec. 152, Ch. 350, L. 1974; amd. Sec. 7, Ch. 533, L. 1977; Sec. 66-1506, R.C.M. 1947; R.C.M. 1947, 66-1504(1), (2)(a) thru (2)(f), (2)(h) thru (2)(j), (3), 66-1506(part); amd. Sec. 4, Ch. 379, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "and drugstore" from the end of (2)(b); and made minor changes in phraseology.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Duty of Department to provide facilities and keep records, 37-1-101.

Duties of boards, 37-1-131.

Disrupting meeting as disorderly conduct, 45-8-101.

37-7-202. Salaries and expenses of board members. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 645, Pol. C. 1895; re-en. Sec. 1627, Rev. C. 1907; re-en. Sec. 6, Ch. 134, L. 1915; re-en. Sec. 3175, R.C.M. 1921; re-en. Sec. 3175, R.C.M. 1935; amd. Sec. 5, Ch. 175, L. 1939; amd. Sec. 26, Ch. 177, L. 1965; amd. Sec. 1, Ch. 82, L. 1969; amd. Sec. 1, Ch. 72, L. 1974; amd. Sec. 151, Ch. 350, L. 1974; amd. Sec. 34, Ch. 439, L. 1975; R.C.M. 1947, 66-1505; amd. Sec. 12, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "$25 a day as" after "receive"; deleted "for the performance of his services as a board member" after "compensation"; deleted "shall be compensated in addition thereto for" before "travel expenses"; substituted "37-1-103" for "2-18-501 through 2-18-503, in attending meetings"; and made minor changes in punctuation.

37-7-203. Attorney general as board attorney — county attorney to prosecute — investigative powers of board, department, and prosecutors. (1) The attorney general is the attorney for the board. The department shall, under rules adopted by the board, assist the board and the attorney general in the administration and enforcement of parts 1 through 4 of this chapter.

(2) The county attorney of a county in which an offense under parts 1 through 4 of this chapter is committed shall prosecute the offender.

(3) The board, the department, or the county attorney may examine the books of a manufacturer, druggist, storekeeper, wholesale dealer, pharmacist, intern, or pharmacy in this state for the purpose of acquiring information to aid in prosecutions under parts 1 through 4 of this chapter.

History: En. Sec. 4, Ch. 104, L. 1931; re-en. Sec. 3202.10, R.C.M. 1935; amd. Sec. 10, Ch. 175, L. 1939; amd. Sec. 8, Ch. 241, L. 1971; amd. Sec. 157, Ch. 350, L. 1974; R.C.M. 1947, 66-1521.

Cross-References

Duties of Attorney General, 2-15-501.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relative to state matters, 7-4-2716.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-7-301. Sale of drugs or medicines unlawful except as provided. (1) It is unlawful for any person to compound, dispense, vend, or sell at retail drugs, medicines, chemicals, or poisons in any place other than a pharmacy, except as hereinafter provided.

(2) It is unlawful for any proprietor, owner, or manager of a pharmacy or any other person to permit the compounding or dispensing of prescriptions or the vending or selling at retail of drugs, medicines, chemicals, or poisons in any pharmacy except by a registered and licensed pharmacist or by an intern registered and licensed by the department, under the supervision of a registered and licensed pharmacist.

(3) It is unlawful for any person to assume or pretend to the title of pharmacist or intern unless such person has a license as such, issued and in force pursuant to parts 1 through 3 of this chapter.

(4) It is unlawful for any person other than a licensed and registered pharmacist or a licensed and registered intern under the supervision of a licensed and registered pharmacist to compound, dispense, vend, or sell at retail drugs, medicines, chemicals, or poisons except as provided in parts 1 through 3.

History: En. Sec. 640, Pol. C. 1895; re-en. Sec. 1622, Rev. C. 1907; re-en. Sec. 1, Ch. 134, L. 1915; re-en. Sec. 3170, R.C.M. 1921; re-en. Sec. 3170, R.C.M. 1935; amd. Sec. 1, Ch. 175, L. 1939; amd. Sec. 1, Ch. 241, L. 1971; R.C.M. 1947, 66-1501; amd. Sec. 9, Ch. 22, L. 1979; amd. Sec. 5, Ch. 379, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "registered and licensed by the department, under the supervision of a registered and licensed pharmacist" for "in the temporary absence of such pharmacist" at the end of (2); inserted "under the supervision of a licensed and registered pharmacist" after "registered intern" in (4).

Cross-References

Regulation of sales of poison by municipalities, 7-31-4102.

Unlawful dispensation of drugs for cure or alleviation of venereal disease, 50-18-110.

License not required for sale of pesticides, 80-8-207.

37-7-302. Examination — qualifications — fees — reciprocity. (1) The department shall give reasonable notice of examinations by mail to known applicants. The department shall record the names of persons examined, together with the grounds on which the right of each to examination was claimed, and also the names of persons registered by examination or otherwise.

(2) The fee for an examination shall be set by the board at a figure commensurate with costs, which fee may in the discretion of the board be returned to applicants not taking the examination.

(3) To be entitled to examination as a pharmacist, the applicant shall be of good moral character and shall have graduated and received the first professional undergraduate degree from the school of pharmacy of the university of Montana or from an accredited pharmacy degree program that has been approved by the board. However, no applicant may receive a registered pharmacist's license until he has complied with the internship requirements established by the board.

(4) The board may in its discretion authorize the department to grant registration without examination to a pharmacist licensed by a board of pharmacy or a similar board of another state which accords similar recognition to licensees of this state if the requirements for registration in the other state are, in the opinion of the board, equivalent to the requirements of this chapter. The fee for registration by reciprocity shall be prescribed by the board.

(5) Every person licensed and registered under this chapter shall receive from the department an appropriate certificate attesting the fact, which shall be conspicuously displayed at all times in his place of business.

History: En. Sec. 646, Pol. C. 1895; re-en. Sec. 1628, Rev. C. 1907; re-en. Sec. 7, Ch. 134, L. 1915; re-en. Sec. 3176, R.C.M. 1921; re-en. Sec. 3176, R.C.M. 1935; amd. Sec. 6, Ch. 175, L. 1939; amd. Sec. 1, Ch. 81, L. 1969; amd. Sec. 4, Ch. 168, L. 1971; amd. Sec. 4, Ch. 241, L. 1971; amd. Sec. 1, Ch. 71, L. 1974; amd. Sec. 152, Ch. 350, L. 1974; amd. Sec. 7, Ch. 533, L. 1977; R.C.M. 1947, 66-1506(part); amd. Sec. 2, Ch. 341, L. 1981; amd. Sec. 15, Ch. 345, L. 1981; amd. Sec. 6, Ch. 379, L. 1981; amd. Sec. 3, Ch. 247, L. 1983.

Compiler's Comments

1983 Amendment: In (2), deleted last sentence, which read: "On again making payment of the fee, an applicant who fails is entitled to take the next succeeding examination free of charge."; and in first sentence of (3), substituted present language for "To be entitled to examination as a pharmacist, the applicant shall be of good moral character and a graduate of the school of pharmacy of the university of Montana or of a college or school of pharmacy accredited by the American council on pharmaceutical education".

1981 Amendments: Chapter 341 deleted "a citizen of the United States" after "applicant shall be" near the beginning of (3).

Chapter 345 substituted "The fee for registration by reciprocity shall be prescribed by the board" for "The fee for registration by reciprocity is $200" in former subsection (3) — now at the end of (4).

Chapter 379 moved the language in former (3), which provided a fee for registration by reciprocity to the end of (4); substituted requirement (now deleted) that applicants be graduates of schools accredited by the council on pharmaceutical education for the requirement that the schools be recognized and approved or a member of the association of colleges of pharmacy in (3); deleted "During this period, if the applicant has passed the examination, he shall be licensed as an intern only." from the end of (3); deleted "If the holder is entitled to manage or conduct a pharmacy in this state for himself or another, the fact shall be set forth in the certificate." from the end of (5).

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Duty of Department to grade examinations, 37-1-101.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

License not required for sale of pesticides, 80-8-207.

37-7-303. Annual renewal fee. (1) A person licensed and registered by the department shall annually pay to the department before June 30 a renewal of registration fee prescribed by the board. A default in the payment of a renewal fee after the date it is due increases the renewal fee as prescribed by the board. It is unlawful for a person who refuses or fails to pay the renewal fee to practice pharmacy in this state. A certificate and renewal expires at the time prescribed, not later than 1 year from its date. A defaulter in a renewal fee may be reinstated within 1 year of the default without examination on payment of the arrears and compliance with the continuing education provisions of this chapter.

(2) The board may charge an additional fee for such license renewal to be used in administering the continuing education provisions of this chapter.

History: En. Sec. 647, Pol. C. 1895; re-en. Sec. 1629, Rev. C. 1907; re-en. Sec. 8, Ch. 134, L. 1915; re-en. Sec. 3177, R.C.M. 1921; re-en. Sec. 3177, R.C.M. 1935; amd. Sec. 7, Ch. 175, L. 1939; amd. Sec. 1, Ch. 70, L. 1957; amd. Sec. 5, Ch. 241, L. 1971; amd. Sec. 153, Ch. 350, L. 1974; amd. Sec. 2, Ch. 439, L. 1977; R.C.M. 1947, 66-1507(part); amd. Sec. 16, Ch. 345, L. 1981; amd. Sec. 7, Ch. 379, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 345 substituted "registration fee prescribed by the board" for "registration fee of $15" at the end of the first sentence of (1); substituted "increases the renewal fee as prescribed by the board" for "increases the renewal fee to $30" at the end of the second sentence of (1); and deleted "of up to $10" after "an additional fee" in (2).

Chapter 379 deleted "for a period of 30 days" after "renewal fee" in the middle of (1).

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-7-304. Continuing education required. (1) After July 1, 1979, no pharmacist's license may be renewed unless the pharmacist has certified, upon a form prescribed by the board, that he has obtained the number of hours of approved continuing education required by the board.

(2) Upon adequate demonstration of good cause for having failed to obtain the required number of continuing education hours through attendance of regularly accredited programs, the board shall renew the license of a pharmacist who has completed an alternative program of compliance prescribed by the board. Alternative programs shall insure competency essentially equivalent to that gained through regularly accredited continuing education programs and may include home study courses, examinations, or any other program prescribed by the board.

History: En. 66-1507.1 by Sec. 3, Ch. 439, L. 1977; R.C.M. 1947, 66-1507.1.

37-7-305. Continuing education rules. The board shall adopt rules for the proper administration of the continuing education provisions of this chapter, including but not limited to:

(1) determinations as to accredited programs;

(2) the number of hours of continuing education required for license renewal; and

(3) alternative methods for fulfilling continuing education requirements as prescribed in 37-7-304(2).

History: En. 66-1507.2 by Sec. 4, Ch. 439, L. 1977; R.C.M. 1947, 66-1507.2.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-7-306 through 37-7-310 reserved.

37-7-311. Revocation of license issued to pharmacist or intern. The board shall revoke licenses issued by the department to a pharmacist or intern whenever the holder of the license:

(1) has obtained it by false representations or fraud;

(2) is an habitual drunkard or addicted to the use of narcotic drugs;

(3) has been convicted of violating the Federal Food, Drug, and Cosmetic Act (Title 21, chapter 9, U.S.C.); chapter 2 or 7 of Title 37, chapter 9 or 10 of Title 45, or chapter 31 or 32 of Title 50, MCA; or rules adopted under such act or chapters; or

(4) has been found by the board guilty of incompetency in the preparation of prescriptions or guilty of gross immorality affecting the discharge of his duties as a pharmacist or intern.

History: En. Sec. 644, Pol. C. 1895; re-en. Sec. 1626, Rev. C. 1907; re-en. Sec. 5, Ch. 134, L. 1915; re-en. Sec. 3174, R.C.M. 1921; re-en. Sec. 3174, R.C.M. 1935; amd. Sec. 4, Ch. 175, L. 1939; amd. Sec. 25, Ch. 93, L. 1969; amd. Sec. 3, Ch. 241, L. 1971; amd. Sec. 150, Ch. 350, L. 1974; R.C.M. 1947, 66-1504(2)(g); amd. Sec. 10, Ch. 22, L. 1979; amd. Sec. 4, Ch. 362, L. 1981; amd. Sec. 8, Ch. 379, L. 1981; amd. Sec. 4, Ch. 247, L. 1983.

Compiler's Comments

1983 Amendment: In (3), changed "pharmacy law" to references to specific federal and state statutes and to rules adopted under them.

1981 Amendments: Chapter 362 deleted former subsection (3) that read "has been convicted of a felony".

Chapter 379 deleted "temporarily or permanently" after "revoke" in the first sentence of the section.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards, 37-1-136.

37-7-312 through 37-7-320 reserved.

37-7-321. Certified pharmacy license — suspension or revocation. (1) The board shall provide for the original certification and annual renewal by the department of every pharmacy doing business in this state. On presentation of evidence satisfactory to the board and on application on a form prescribed by the board and on the payment of an original certification fee prescribed by the board, the department shall issue a license to a pharmacy as a certified pharmacy. However, the license may be granted only to pharmacies operated by registered pharmacists qualified under this chapter. The annual renewal fee for a pharmacy shall be set by the board. Any default in the payment of such renewal fee after the date the same is due shall increase the renewal fee as prescribed by the board. The license must be displayed in a conspicuous place in the pharmacy for which it is issued and expires on June 30 following the date of issue. It is unlawful for a person to conduct a pharmacy, use the word "pharmacy" to identify his business, or use the word "pharmacy" in advertising unless a license has been issued and is in effect.

(2) The board may suspend, revoke, or refuse to renew a pharmacy license:

(a) obtained by false representation or fraud;

(b) when the pharmacy for which the license is issued is kept open for the transaction of business without a pharmacist in charge;

(c) when the person to whom the license is granted has been convicted of:

(i) a violation of parts 1 through 3 of this chapter; or

(ii) a violation of the Federal Food, Drug, and Cosmetic Act (Title 21, chapter 9, U.S.C.); chapter 2 or 7 of Title 37, chapter 9 or 10 of Title 45, or chapter 31 or 32 of Title 50, MCA; or rules adopted under such act or chapters;

(d) when the person to whom the license is granted is a natural person whose pharmacist license has been revoked; or

(e) when the pharmacy is conducted in violation of parts 1 through 3 of this chapter.

(3) Before a license can be revoked, the holder is entitled to a hearing by the board.

History: En. Sec. 8, Ch. 175, L. 1939; amd. Sec. 1, Ch. 76, L. 1959; amd. Sec. 1, Ch. 9, L. 1967; amd. Sec. 1, Ch. 80, L. 1969; amd. Sec. 6, Ch. 241, L. 1971; amd. Sec. 1, Ch. 308, L. 1974; amd. Sec. 154, Ch. 350, L. 1974; amd. Sec. 8, Ch. 533, L. 1977; R.C.M. 1947, 66-1508; amd. Sec. 17, Ch. 345, L. 1981; amd. Sec. 5, Ch. 362, L. 1981; amd. Sec. 9, Ch. 379, L. 1981; amd. Sec. 5, Ch. 247, L. 1983.

Compiler's Comments

1983 Amendment: In (2)(c)(ii), inserted last clause referring to state statutes and to rules adopted under federal or state statutes.

1981 Amendments: Chapter 345 substituted "an annual fee prescribed by the board" for "an annual fee of $10" near the beginning of former subsection (1); substituted "fee prescribed by the board" for "fee of $100" in the second sentence of (1); deleted "in an amount not to exceed $50" after "board" in the fourth sentence of (1); and substituted "increase the renewal fee as prescribed by the board" for "increase the renewal fee to the sum of $100" in the fifth sentence of (1).

Chapter 362 deleted former subsection (1) relating to the licensing of stores other than pharmacies; deleted "store or" before "pharmacy" in (2) and (2)(e); deleted "(ii) a felony; or" from (2)(c); made minor changes in phraseology.

Chapter 379 deleted the last sentence of former subsection (1); deleted "or registered interns" after "registered pharmacists" near the middle of (1); deleted "for a period of 30 days" after "payment of such renewal fee" in the fifth sentence of (1); substituted a citation to the U.S. Code for a citation to the U.S. Statutes at Large in (2)(c)(ii); and deleted "or intern" after "pharmacist" in (2)(d).

Cross-References

Contested case procedure applicable to revocation of licenses, 2-4-631.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Disciplinary authority of boards — injunctions, 37-1-136.

37-7-322. Use of words pharmacy, apothecary, or chemist shop for advertising. It is unlawful for a person to carry on, conduct, or transact a retail business under a name which contains as a part thereof the words "pharmacy", "apothecary", or "chemist shop" or any abbreviation, translation, extension, or variation thereof or in any manner by advertisement circular or poster, sign, or otherwise to describe or refer to the place of business conducted by that person by such term, abbreviation, translation, extension, or variation unless the place so conducted is a pharmacy within the meaning of this chapter and duly licensed as such and in the charge of a registered pharmacist.

History: En. Sec. 11, Ch. 175, L. 1939; amd. Sec. 9, Ch. 101, L. 1977; R.C.M. 1947, 66-1522.

37-7-323. Penalty. Any person, firm, partnership, or corporation violating any of the provisions of parts 1 through 3 of this chapter shall be guilty of a misdemeanor and upon conviction for each violation shall be punished accordingly, and any thereof convicted shall automatically lose any license issued by the board.

History: En. Sec. 5, Ch. 104, L. 1931; re-en. Sec. 3202.11, R.C.M. 1935; amd. Sec. 15, Ch. 175, L. 1939; R.C.M. 1947, 66-1526.

Cross-References

Disciplinary authority of boards — injunctions, 37-1-136.

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Misdemeanor penalty when no penalty specified, 46-18-212.

Fines in felony and misdemeanor cases, 46-18-231.

37-7-324. Deposit of fees and fines. Fines paid under this chapter and fees collected by the department for registration and licenses issued under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 6, Ch. 104, L. 1931; re-en. Sec. 3202.12, R.C.M. 1935; amd. Sec. 16, Ch. 175, L. 1939; amd. Sec. 134, Ch. 147, L. 1963; amd. Sec. 159, Ch. 350, L. 1974; R.C.M. 1947, 66-1527; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Part 4

Prescriptions Regulated — Poisons

Part Cross-References

Dispensing of drugs, Title 37, ch. 2, part 1.

Dangerous drugs, Title 45, ch. 9.

Controlled substances, Title 50, ch. 32.

37-7-401. Restrictions upon sale or prescription of opiates — coding prohibited — refilling prescriptions. (1) It shall be unlawful for any physician to sell or give to or prescribe for any person any opium, morphine, alkaloid-cocaine, or alpha or beta eucaine or codeine or heroin or any derivative, mixture, or preparation of any of them, except to a patient believed in good faith to require the same for medical use and in quantities proportioned to the needs of such patients.

(2) A prescription must be so written that it can be compounded by any registered pharmacist. The coding of any prescription is a violation of this section.

(3) A prescription marked "non repetatur", "non rep", or "N.R." cannot be refilled. A prescription marked to be refilled by a specified amount may be filled by any registered pharmacist the number of times marked on the prescription. A prescription not bearing any refill instructions may not be refilled without first obtaining permission from the prescriber. A prescription may not be refilled for more than 3 years from the date it was originally filled. No narcotic prescription may be refilled.

History: En. Sec. 2, Ch. 11, L. 1911; re-en. Sec. 3187, R.C.M. 1921; re-en. Sec. 3187, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1951; R.C.M. 1947, 66-1514; amd. Sec. 10, Ch. 379, L. 1981.

Compiler's Comments

1981 Amendment: Substituted prohibitory language on refills of prescriptions not having refill instructions for permissive language in subsection (3). Restricted refills to 3 years from the date originally filled.

37-7-402. Penalty for violation of provisions on sale or prescription of opiates, coding, refilling. Any person found guilty of the violation of 37-7-401 shall be punished for each separate offense (and each and every individual case shall constitute a separate offense) by a fine of not less than $50 or more than $500 or by imprisonment in the county jail for a period of not less than 60 days or more than 100 days or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 11, L. 1911; re-en. Sec. 3188, R.C.M. 1921; re-en. Sec. 3188, R.C.M. 1935; R.C.M. 1947, 66-1515.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Fines in felony and misdemeanor cases, 46-18-231.

37-7-403. Repealed. Sec. 8, Ch. 247, L. 1983.

History: En. Sec. 1, Ch. 11, L. 1935; re-en. Sec. 3185.1, R.C.M. 1935; amd. Sec. 155, Ch. 350, L. 1974; R.C.M. 1947, 66-1511.

37-7-404. Repealed. Sec. 8, Ch. 247, L. 1983.

History: En. Sec. 2, Ch. 11, L. 1935; re-en. Sec. 3185.2, R.C.M. 1935; amd. Sec. 156, Ch. 350, L. 1974; R.C.M. 1947, 66-1512.

37-7-405. Repealed. Sec. 8, Ch. 247, L. 1983.

History: En. Sec. 3, Ch. 11, L. 1935; re-en. Sec. 3185.3. R.C.M. 1935; R.C.M. 1947, 66-1513.

Part 5

Drug Product Selection

37-7-501. Short title. This part may be cited as the "Montana Drug Product Selection Act".

History: En. 66-1528 by Sec. 1, Ch. 403, L. 1977; R.C.M. 1947, 66-1528.

37-7-502. Definitions. As used in this part, the following definitions apply:

(1) "Bioavailability" means the extent and rate of absorption from a dosage form as reflected by the time-concentration curve of the administered drug in the systemic circulation.

(2) "Bioequivalent" means a chemical equivalent which, when administered to the same individual in the same dosage regimen, will result in comparable bioavailability.

(3) "Brand name" means the proprietary or the registered trademark name given to a drug product by its manufacturer, labeler, or distributor and placed upon the drug, its container, label, or wrapping at the time of packaging.

(4) "Chemical equivalent" means drug products that contain the same amounts of the same therapeutically active ingredients in the same dosage forms and that meet present compendium standards.

(5) "Drug product" means a dosage form containing one or more active therapeutic ingredients along with other substances included during the manufacturing process.

(6) "Generic name" means the chemical or established name of a drug product or drug ingredient published in the latest edition of the official United States Pharmacopoeia/National Formulary.

(7) "Person" means an individual, firm, partnership, association, corporation, or any other entity, whether organized for profit or not.

(8) "Prescriber" means a practitioner licensed under the professional laws of the state to administer medicine and drugs.

(9) "Present compendium standard" means the official standard for drug excipients and drug products listed in the latest revision of the United States Pharmacopoeia/National Formulary.

(10) "Product selection" means to dispense without the prescriber's express authorization a different drug product in place of the drug product prescribed.

(11) "Therapeutically equivalent" means those chemical equivalents which, when administered in the same dosage regimen, will provide essentially the same therapeutic effect as measured by the control of a symptom or a disease and/or toxicity.

History: En. 66-1529 by Sec. 2, Ch. 403, L. 1977; R.C.M. 1947, 66-1529; amd. Sec. 11, Ch. 379, L. 1981.

Compiler's Comments
1981 Amendment: Substituted a reference to the National Formulary for the Homeopathic Pharmacopoeia in (6); and made minor changes in phraseology.

37-7-503. Rulemaking. The board of pharmacy may adopt, amend, or repeal rules necessary for the implementation, continuation, and enforcement of this part in accordance with the Montana Administrative Procedure Act.

History: En. 66-1535 by Sec. 8, Ch. 403, L. 1977; R.C.M. 1947, 66-1535; amd. Sec. 1, Ch. 247, L. 1983.

Compiler's Comments
1983 Amendment: Substituted "board of pharmacy" for "board of pharmacists".

Cross-References
Montana Administrative Procedure Act, Title 2, ch. 4.

37-7-504. General prohibition of drug substitution. No person may substitute a drug different from the one ordered or deviate in any manner from the requirements of an order or prescription, except as provided in this part.

History: En. 66-1523(2) by Sec. 10, Ch. 403, L. 1977; R.C.M. 1947, 66-1523.

Cross-References
Unfair trade practices and consumer protection, Title 30, ch. 14.

37-7-505. Product selection permitted — limitation. (1) Except as limited by subsection (2) of this section and unless instructed otherwise by the purchaser, the pharmacist who receives a written or oral prescription for a specific drug product by brand or proprietary name may select a less expensive drug product with the same generic name, the same strength, quantity, dose, and dosage form as the prescribed drug which is, in the pharmacist's professional opinion, therapeutically equivalent, bioequivalent, and bioavailable.

(2) If, in the professional opinion of the prescriber, it is medically necessary for his patient that an equivalent drug product not be selected, the prescriber may so indicate by certifying that in his professional judgment the

specific brand-name drug product is medically necessary for that particular patient. In the case of a prescription transmitted orally, the prescriber must expressly indicate to the pharmacist that the brand-name drug product prescribed is medically necessary.

History: **En. 66-1530 by Sec. 3, Ch. 403, L. 1977; R.C.M. 1947, 66-1530.**

37-7-506. Notice to purchaser. (1) A pharmacist who selects a drug product as provided in 37-7-505 shall notify the person presenting the prescription that he may refuse the product selection as provided in 37-7-505.

(2) Each pharmacy shall display in a prominent place that is in clear and unobstructed public view, at or near the place where prescriptions are dispensed, a sign stating: "This pharmacy may be able to select a less expensive drug product which is equivalent to the one prescribed by your physician unless you or your physician request otherwise." The printing on the sign shall be in block letters not less than 1 inch in height.

History: **En. 66-1531 by Sec. 4, Ch. 403, L. 1977; R.C.M. 1947, 66-1531.**

37-7-507. Savings passed on. (1) A pharmacist selecting a less expensive drug product must pass on to the purchaser the full amount of the savings realized by the product selection. In no event may the pharmacist charge a different professional fee for dispensing a different drug product than the drug product originally prescribed.

(2) If the prescriber prescribes a drug product by its generic name, the pharmacist must, consistent with reasonable judgment, dispense the lowest retail priced, therapeutically equivalent brand which is in stock.

History: **En. 66-1532 by Sec. 5, Ch. 403, L. 1977; R.C.M. 1947, 66-1532.**

37-7-508. Product selection not practice of medicine. The selection of a drug product by a registered pharmacist under the provisions of this part does not constitute the practice of medicine.

History: **En. 66-1533 by Sec. 6, Ch. 403, L. 1977; R.C.M. 1947, 66-1533.**

Cross-References

Exemption from physician's licensing requirements, 37-3-103.

37-7-509. Limitations on liability. (1) A pharmacist making a product selection under the provisions of this part assumes no greater responsibility for selecting the dispensed drug product than he would incur in filling a prescription for a drug product prescribed by a generic name.

(2) When a pharmacist selects a drug product, the prescriber may not be held liable in an action for loss, damage, injury, or death to a person caused by the use of the selected drug product, except that if the original drug product was incorrectly prescribed, the prescriber is not relieved of liability.

History: **En. 66-1534 by Sec. 7, Ch. 403, L. 1977; R.C.M. 1947, 66-1534.**

Cross-References

Availability of remedies — liability, Title 27, ch. 1.

Montana Medical Legal Panel Act, Title 27, ch. 6.

37-7-510. Penalty. (1) In addition to all other penalties provided by law, a person who violates the provisions of 37-7-505, 37-7-506, or 37-7-507 or any rule promulgated as provided in 37-7-503 shall be fined no more than $250 for each violation.

(2) The penalty imposed under this part may be remitted or mitigated upon such terms and conditions as the board of pharmacy considers proper and consistent with the public health and safety.

(3) A civil penalty imposed under this part becomes due and payable when the person incurring the penalty receives a notice in writing from the board of pharmacy. The notice shall be sent by registered or certified mail and must include:

(a) reference to the particular sections of the statute or rule;

(b) a short and plain statement of the matters asserted as charged;

(c) a statement of the amount of the penalty or penalties imposed; and

(d) a statement of the person's right to request a hearing.

(4) The person to whom the notice is addressed has 20 days from the date of the notice in which to make written application for a hearing before the board of pharmacy.

History: En. 66-1536 by Sec. 11, Ch. 403, L. 1977; R.C.M. 1947, 66-1536; amd. Sec. 1, Ch. 247, L. 1983.

Compiler's Comments

1983 Amendment: Substituted "board of pharmacy" for "board of pharmacists" in three places.

Cross-References

Contested case as including licensing, 2-4-102, 2-4-631.

Contested case procedure, Title 2, ch. 4, part 6.

Criminal responsibility of corporation, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

CHAPTER 8

NURSING

Part 1 — General

Section
37-8-101. Purpose.
37-8-102. Definitions.
37-8-103. Exemptions — limitations on authority conferred.

Part 2 — Board of Nursing

37-8-201. Seal — board records public — legal counsel.
37-8-202. Organization — meetings — powers and duties.
37-8-203. Compensation of members — expenses.
37-8-204. Qualifications of secretary.

Part 3 — Schools of Nursing

37-8-301. Nursing education programs — application for approval.
37-8-302. Nursing education programs — survey and approval.

Part 4 — Licensing

37-8-401. Unlawful to indicate licensure without valid license.
37-8-402 through 37-8-404 reserved.
37-8-405. Professional nursing — qualifications of applicants for license.
37-8-406. License — professional nursing — examination.
37-8-407. Endorsement — professional nursing.
37-8-408. Title and abbreviation of registered nurse.
37-8-409. Midwifery — when professional nurse may practice.

37-8-410 through 37-8-414 reserved.
37-8-415. Licensed practical nursing — qualifications of applicants.
37-8-416. Licensed practical nursing — examination.
37-8-417. Endorsement — licensed practical nursing.
37-8-418. Licensed practical nursing — application fee.
37-8-419. Title and abbreviation of licensed practical nurse.
37-8-420 through 37-8-429 reserved.
37-8-430. Temporary work permit.
37-8-431. Renewal of license.
37-8-432. Deposit of fees.
37-8-433 through 37-8-440 reserved.
37-8-441. Denial, revocation, or suspension of license — grounds.
37-8-442. Denial, revocation, or suspension of license — procedure.
37-8-443. Violation of chapter — penalties.
37-8-444. Injunctions.

Chapter Cross-References

Limits on liability for emergency care rendered at scene of accident or emergency, 27-1-714.

Professional service corporations, Title 35, ch. 4.

General provisions relating to health care practitioners, Title 37, ch. 2.

Limitations on dentistry and oral surgery practices involving general anesthesia, 37-4-511.

Collective bargaining for nurses, Title 39, ch. 32.

Nurses required to report child abuse, 41-3-201.

Health care information, Title 50, ch. 16.

Part 1

General

Part Cross-References

Duty of nurse to report violation of Montana Elder Abuse Prevention Act, 53-5-511.

37-8-101. Purpose. (1) In order to safeguard life and health, any person practicing or offering to practice professional nursing in this state for compensation or personal gain shall be required to submit evidence that he or she is qualified to practice and shall be licensed as hereinafter provided.

(2) In order to safeguard life and health, any person practicing or offering to practice practical nursing in this state for compensation or personal gain shall be required to submit evidence that he or she is qualified to practice and shall be licensed as hereinafter provided.

History: En. Sec. 1, Ch. 243, L. 1953; amd. Sec. 1, Ch. 291, L. 1967; R.C.M. 1947, 66-1221(part).

37-8-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of nursing provided for in 2-15-1844.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Practice of nursing" embraces two classes of nursing service and activity, as follows:

(a) "Practice of professional nursing" means the performance for compensation of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health; the prevention, casefinding, and management of illness, injury, or infirmity; and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (3)(a):

(i) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

(ii) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals.

(b) "Practice of practical nursing" means the performance for compensation of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. Practical nursing practice utilizes standardized procedures leading to predictable outcomes in the observation and care of the ill, injured, and infirm; in the maintenance of health; in action to safeguard life and health; and in the administration of medications and treatments prescribed by a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments.

(4) "Nursing education program" means any board-approved school that prepares graduates for initial licensure under this chapter. Nursing education programs for:

(a) professional nursing may be a department, school, division, or other administrative unit in a senior or junior college or university;

(b) practical nursing may be a department, school, division, or other administrative unit in a vocational-technical center or junior college.

History: En. Sec. 2, Ch. 243, L. 1953; amd. Sec. 2, Ch. 291, L. 1967; amd. Sec. 114, Ch. 350, L. 1974; amd. Sec. 1, Ch. 180, L. 1975; R.C.M. 1947, 66-1222; amd. Sec. 4, Ch. 248, L. 1981; amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 248 completely rewrote this section. For former text, see sec. 1. Ch. 180, L. 1975.

Chapter 274 substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

37-8-103. Exemptions — limitations on authority conferred. (1) No provisions of this law may be construed as prohibiting:

(a) gratuitous nursing by friends or members of the family;

(b) incidental care of the sick by domestic servants or persons primarily employed as housekeepers;

(c) nursing assistance in the case of an emergency;

(d) the practice of nursing by students enrolled in approved nursing education programs;

(e) the practice of nursing in this state by any legally qualified nurse of another state whose engagement requires the nurse to accompany and care for a patient temporarily residing in this state during the period of one such engagement not to exceed 6 months in length, provided that person does not represent or hold herself or himself out to be a nurse licensed to practice in this state;

(f) the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency thereof while in the discharge of that nurse's official duties;

(g) nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of any well-established religion or denomination by adherents thereof;

(h) nursing or care of a minor who is in the care of a licensed foster parent, to the same extent such care may be provided by a parent or guardian; and

(i) the execution of a death sentence pursuant to 46-19-103.

(2) This chapter may not be construed as conferring any authority to practice medicine, surgery, or any combination thereof; to confer any authority to practice any of the healing arts prescribed by law to be practiced in the state of Montana; or to permit any person to undertake the treatment of disease by any of the methods employed in those arts unless the licensee has been qualified under the applicable law or laws licensing the practice of those professions or healing arts in the state of Montana.

History: En. Sec. 22, Ch. 243, L. 1953; amd. Sec. 7, Ch. 291, L. 1967; amd. Sec. 4, Ch. 101, L. 1977; R.C.M. 1947, 66-1242; amd. Sec. 1, Ch. 148, L. 1979; amd. Sec. 5, Ch. 248, L. 1981; amd. Sec. 2, Ch. 411, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (1)(i).

1981 Amendment: Substituted "nursing education programs" for "schools of nursing or approved courses or by the graduates of such schools or courses pending the results of the first licensing examination scheduled by the board following their graduation" in (1)(d).

Cross-References

Exemptions from physician's licensing requirements, 37-3-103.

Part 2

Board of Nursing

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1844.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-8-201. Seal — board records public — legal counsel. (1) The board shall have a seal which shall be used to authenticate its acts. The seal shall have inscribed the words "Board of Nursing—Official Seal" and a device or legend designated by the board.

(2) The records and files of the board kept by the department are at all times open to public inspection.

(3) The attorney general is the attorney and legal counsel for the board, but the department may, with the approval of the attorney general, appoint additional legal counsel to assist the board and department in the administration and enforcement of this chapter.

History: En. Sec. 3, Ch. 243, L. 1953; amd. Sec. 115, Ch. 350, L. 1974; R.C.M. 1947, 66-1223; amd. Sec. 6, Ch. 248, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "under each administration" following "its acts" in (1).

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.
Public records, Title 2, ch. 6.
Duties of Attorney General, 2-15-501.
Preservation of records, Title 22, ch. 3, part 2.
Duty of Department to keep records, 37-1-101.

37-8-202. Organization — meetings — powers and duties. (1) The board shall meet annually and shall elect from among the nine members a president and a secretary. The board shall hold other meetings when necessary to transact its business. A majority of the board constitutes a quorum at any meeting. The department shall keep complete minutes and records of the meetings and rules and orders promulgated by the board.

(2) The board may make rules necessary to administer this chapter. The board shall prescribe standards for schools preparing persons for registration and licensure under this chapter. It shall provide for surveys of schools at times it considers necessary. It shall approve programs that meet the requirements of this chapter and of the board. The department shall, subject to 37-1-101, examine and issue to and renew licenses of qualified applicants. The board shall conduct hearings on charges which may call for discipline of a licensee, revocation of a license, or removal of schools of nursing from the approved list. It shall cause the prosecution of persons violating this chapter and may incur necessary expenses for this.

(3) The board may adopt and the department shall publish forms for use by applicants and others, including license, certificate, and identity forms and other appropriate forms and publications convenient for the proper administration of this chapter, and the board may fix reasonable fees for incidental services, all within the subject matter delegated by this chapter.

(4) The board may participate in and pay fees to a national organization of state boards of nursing to assure interstate endorsement of licenses.

(5) The board of nursing may define the educational requirements and other qualifications applicable to specialty areas of nursing. Specialty areas of nursing are those that require additional professional education beyond the basic nursing degree required of a registered nurse, which additional education is obtained in courses offered in a university setting or its equivalent and certified by the American nurses' association. Specialty areas of nursing include nurse practitioners, nurse-midwives, and nurse-anesthetists.

History: En. Sec. 5, Ch. 243, L. 1953; amd. Sec. 116, Ch. 350, L. 1974; amd. Sec. 2, Ch. 180, L. 1975; R.C.M. 1947, 66-1225; amd. Sec. 7, Ch. 248, L. 1981.

Compiler's Comments

1981 Amendment: Completely rewritten. For former text, see sec. 2, Ch. 180, L. 1975.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Meeting defined, 2-3-202.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Contested case procedure, Title 2, ch. 4, part 6.
Open meetings, Title 3, ch. 3, part 2.
Duty of Department to provide facilities, 37-1-101.
Duties of boards, 37-1-131.
Disrupting meeting as disorderly conduct, 45-8-101.

37-8-203. Compensation of members — expenses. Each member of the board shall receive compensation and travel expenses as provided in 37-1-133.

History: En. Sec. 6, Ch. 243, L. 1953; amd. Sec. 117, Ch. 350, L. 1974; amd. Sec. 3, Ch. 180, L. 1975; amd Sec. 31, Ch. 439, L. 1975; R.C.M. 1947, 66-1226; amd. Sec. 13, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "receive compensation" for "be paid mileage"; and substituted "37-1-133" for "2-18-501 through 2-18-503 and, in addition, $25 per day for each day actually engaged in the discharge of duties under this chapter, including the time spent in actual attendance at a meeting of the board and in direct travel to and from meetings and a reasonable number of days for the preparation and administration of examinations".

37-8-204. Qualifications of secretary. Any secretary hired by the department to provide services to the board in connection with the board's duties of prescribing curricula and standards for nursing schools, making surveys of and approving schools and courses, evaluating and approving courses for affiliation of student nurses, and reviewing qualifications of applicants for licensure for the board shall be:

(1) a citizen of the United States;

(2) a graduate of an approved school of nursing;

(3) a holder of at least a master's degree with postgraduate courses in nursing;

(4) a registered professional nurse with at least 5 years' experience in teaching or administration in an approved school of nursing.

History: En. Sec. 19, Ch. 243, L. 1953; amd. Sec. 126, Ch. 350, L. 1974; amd. Sec. 6, Ch. 180, L. 1975; R.C.M. 1947, 66-1239(3); amd. Sec. 2, Ch. 83, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "shall first be approved by the board and" before "shall be" at the end of the introductory clause.

Part 3

Schools of Nursing

37-8-301. Nursing education programs — application for approval. An institution desiring to conduct a nursing education program in the state shall apply to the department and submit evidence that it is prepared to carry out an educational program that complies with the provisions of this chapter and the rules adopted by the board pursuant to this section. The board shall adopt rules relating to the conduct of nursing education programs that are directed toward insuring qualifications to practice as a professional nurse or a practical nurse in those areas of service specified in 37-8-102.

History: En. Sec. 18, Ch. 243, L. 1953; amd. Sec. 125, Ch. 350, L. 1974; R.C.M. 1947, 66-1238; amd. Sec. 8, Ch. 248, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "nursing education program in the state" for "school of professional or practical nursing" in the first sentence; substituted the language following "submit evidence that" for former subsections (1) and (2) that required evidence that a nursing school "is prepared to carry out the prescribed basic professional nursing curriculum or the prescribed curriculum for practical nursing, as the case may be; and it is prepared to meet other standards established by this law and by the board".

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-8-302. Nursing education programs — survey and approval. (1) It is the duty of the department through its authorized employees or representatives to periodically survey all nursing education programs. Written reports of such surveys shall be submitted to the board. If, in the opinion of the board, the requirements for an approved nursing education program are met, the program shall be granted initial or continuing approval.

(2) If the board determines that any approved nursing education program is not maintaining the standards required by law and the rules established by the board, notice shall be given to the nursing education program specifying the areas of noncompliance. A program that fails to correct these areas of noncompliance within the time designated by the board shall be removed from the list of approved nursing education programs.

History: En. Sec. 19, Ch. 243, L. 1953; amd. Sec. 126, Ch. 350, L. 1974; amd. Sec. 6, Ch. 180, L. 1975; R.C.M. 1947, 66-1239(1), (2); amd. Sec. 9, Ch. 248, L. 1981.

Compiler's Comments

1981 Amendment: Completely rewritten. Former section read: "Schools of nursing — survey and approval. (1) A survey of the school and institution or institutions with which the school is to be affiliated shall be made by the department, which shall submit a detailed written report of the survey to the board. If, in the opinion of the board, the requirements for an approved school of nursing (professional or practical) are met, it shall approve the school as an approved school of nursing.

(2) When the board determines that an approved school of nursing is not maintaining the standards required by law and by the board, notice in writing specifying the defect shall be immediately given to the school. A school which fails to correct these conditions to the satisfaction of the board within a reasonable time shall be removed from the list of approved schools of nursing."

Part 4

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-8-401. Unlawful to indicate licensure without valid license. It shall be unlawful for any person to use any title, abbreviation, sign, card, or device to indicate that such person is a registered professional nurse or a licensed practical nurse unless such person has been duly licensed under the provisions of this chapter, and the license of such person shall be valid and in force in compliance with the provisions of this chapter.

History: En. Sec. 1, Ch. 243, L. 1953; amd. Sec. 1, Ch. 291, L. 1967; R.C.M. 1947, 66-1221(part).

37-8-402 through 37-8-404 reserved.

37-8-405. Professional nursing — qualifications of applicants for license. An applicant for a license to practice as a registered professional nurse shall submit to the department written evidence, verified by oath, that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;

(2) has completed the basic professional curriculum in an approved school of nursing and holds a diploma therefrom; and

(3) meets other qualification requirements the board prescribes.

History: En. Sec. 7, Ch. 243, L. 1953; amd. Sec. 118, Ch. 350, L. 1974; R.C.M. 1947, 66-1227; amd. Sec. 3, Ch. 84, L. 1983.

Compiler's Comments

1983 Amendment: In (3), after "board" deleted "acting under the professional nursing administration".

Cross-References

Oath defined, 1-1-201.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.
Oaths, Title 1, ch. 6.
Affidavits, Title 26, ch. 1, part 10.
Licensing investigation and review — record access, 37-1-135.
Perjury, 45-7-201.
False swearing, 45-7-202.

37-8-406. License — professional nursing — examination. (1) An applicant for a license to practice as a registered professional nurse is required to pass a written examination in subjects the board determines necessary. A written examination may be supplemented by an oral or practical examination. The board may use any national standardized examination for professional nurse licensure identified in its rules. The passing score on such examination shall be established by the board in its rules. On successfully passing the examination, an applicant shall be issued a license to practice professional nursing.

(2) The board shall establish in its rules the requirements for rewriting the examination for those persons failing the examination on the first writing and subsequent writing.

History: En. Sec. 8, Ch. 243, L. 1953; amd. Sec. 1, Ch. 195, L. 1963; amd. Sec. 3, Ch. 291, L. 1967; amd. Sec. 119, Ch. 350, L. 1974; amd. Sec. 4, Ch. 180, L. 1975; amd. Sec. 1, Ch. 215, L. 1975; R.C.M. 1947, 66-1228(1); amd. Sec. 10, Ch. 248, L. 1981; amd. Sec. 18, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 248 completely rewrote the section. Former section read: "Professional nursing — examination — fee. An applicant for a license to practice professional nursing is required to pass a written examination in subjects the board, acting under the professional nursing administration, determines. A written examination may be supplemented by an oral or practical examination. On successfully passing the examination, the department shall issue to the applicant a license to practice nursing as a registered professional nurse. The applicant shall pay a fee of $35 at the time the application is submitted, which shall be returned to the applicant if the application is withdrawn not later than 5 days prior to the date of examination or if the examination is not taken, subject to deduction by the department of $1 per subject of the examination which shall be retained by the department."

Chapter 345 substituted "shall pay a fee prescribed by the board" for "shall pay a fee of $35" near the beginning of the fourth sentence of the former section; and substituted "subject to deduction by the department of an amount prescribed by the board" for "subject to deduction by the department of $1" near the end of the last sentence of the former section.

Composite Section: The amendment by Ch. 345, L. 1981, substituting fee-setting authority in the board for statutory application fee amounts was not codified because Ch. 248, L. 1981, amended this section by deleting all reference to application fees.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
Duty of Department to administer and grade examinations, 37-1-101.
Licensing boards to establish fees commensurate with costs, 37-1-134.

37-8-407. Endorsement — professional nursing. The board may issue without examination a license to practice nursing as a registered professional nurse to an applicant who has been licensed or registered as a professional nurse under the laws of another state or territory if in the opinion of the board the applicant meets the qualifications required of registered nurses in this state at the time the applicant graduated from a school of nursing. The applicant shall pay a fee prescribed by the board at the time the application is submitted, which shall be returned to the applicant if the application is withdrawn not later than 5 days prior to final submission of the application to the board, subject to deduction of an amount prescribed by the board to be retained by the department.

History: En. Sec. 8, Ch. 243, L. 1953; amd. Sec. 1, Ch. 195, L. 1963; amd. Sec. 3, Ch. 291, L. 1967; amd. Sec. 119, Ch. 350, L. 1974; amd. Sec. 4, Ch. 180, L. 1975; amd. Sec. 1, Ch. 215,

L. 1975; R.C.M. 1947, 66-1228(2), (3); amd. Sec. 11, Ch. 248, L. 1981; amd. Sec. 19, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 248 deleted "—professional nursing administration" after "board" at the beginning of the section; deleted former subsections (2) and (3). For former text of these subsections, see sec. 1, Ch. 215, L. 1975 (66-1228(2)(3)).

Chapter 345 substituted "shall pay a fee prescribed by the board" for "shall pay a fee of $35" at the beginning of the second sentence; and substituted "subject to deduction of an amount prescribed by the board" for "subject to deduction of $5" near the end.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Affidavits, Title 26, ch. 1, part 10.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-8-408. Title and abbreviation of registered nurse. Any person who holds a valid license to practice as a registered professional nurse in this state shall have the right to use the title "Registered Nurse" and the abbreviation "R.N.".

History: En. Sec. 9, Ch. 243, L. 1953; R.C.M. 1947, 66-1229.

37-8-409. Midwifery — when professional nurse may practice. (1) A person licensed under 37-8-406 or 37-8-407 who holds a certificate in nurse-midwifery from the American college of nurse-midwives may practice midwifery upon approval by the board of an amendment to her license granting a certificate of nurse-midwifery. The board shall grant a certificate of nurse-midwifery to a person who submits written verification of certification by the American college of nurse-midwives and who meets such other qualification requirements as the board may prescribe.

(2) The board may give temporary approval to practice nurse-midwifery for up to 4 months to a person who has taken the American college of nurse-midwives national certification examination, pending receipt of official notification of the results of the examination.

History: En. 66-1246 by Sec. 2, Ch. 97, L. 1974; R.C.M. 1947, 66-1246; amd. Sec. 12, Ch. 248, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "—professional nursing administration" after "board" in (1) and at the beginning of (2).

Cross-References

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-8-410 through 37-8-414 reserved.

37-8-415. Licensed practical nursing — qualifications of applicants. An applicant for a license to practice as a licensed practical nurse shall submit to the board written evidence, verified by oath, that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;

(2) is a graduate of an approved practical nursing education program that is authorized to prepare persons for licensure as practical nurses; and

(3) meets other qualification requirements the board prescribes in its rules.

History: En. Sec. 11, Ch. 243, L. 1953; amd. Sec. 4, Ch. 291, L. 1967; amd. Sec. 120, Ch. 350, L. 1974; R.C.M. 1947, 66-1231; amd. Sec. 13, Ch. 248, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "board" for "department" in the first sentence of the section; substituted language in (2) for "has successfully completed the prescribed curriculum in an approved school of practical nursing and holds a diploma or certificate therefrom"; deleted "acting under the practical nursing administration" after "board" in (3); added "in its rules" at the end of (3).

Cross-References

Oath defined, 1-1-201.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Affidavits, Title 26, ch. 1, part 10.

Licensing investigation and review — record access, 37-1-135.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-8-416. Licensed practical nursing — examination. An applicant for a license to practice as a practical nurse is required to pass a written examination in subjects as the board determines. A written examination may be supplemented by an oral or practical examination. The board may use any nationally standardized examination for practical nurse licensure identified by the board in its rules. The passing score shall be established by the board in its rules. On successfully passing the examination, the board shall issue to the applicant a license to practice as a licensed practical nurse.

History: En. Sec. 12, Ch. 243, L. 1953; amd. Sec. 5, Ch. 291, L. 1967; amd. Sec. 121, Ch. 350, L. 1974; amd. Sec. 5, Ch. 180, L. 1975; R.C.M. 1947, 66-1232(1); amd. Sec. 14, Ch. 248, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "acting under the practical nursing administration" after "board" in the first sentence; inserted the third and fourth sentences; substituted "board" for "department" in the last sentence.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-8-417. Endorsement — licensed practical nursing. The board may issue a license to practice as a licensed practical nurse, without examination, to an applicant who has been licensed or registered as a licensed practical nurse or person entitled to perform like services under a different title under the laws of another state or territory if, in the opinion of the board, the applicant meets the requirements for practical nurses in this state.

History: En. Sec. 12, Ch. 243, L. 1953; amd. Sec. 5, Ch. 291, L. 1967; amd. Sec. 121, Ch. 350, L. 1974; amd. Sec. 5, Ch. 180, L. 1975; R.C.M. 1947, 66-1232(2), (3); amd. Sec. 15, Ch. 248, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "—practical nursing administration" after "board" at the beginning of the section; substituted "board" for "practical nursing administration" in the last sentence; deleted former subsection (2) that read: "(2) An applicant may, pending licensure as a practical nurse under subsection (1) of this section, practice practical nursing as an employee of a health care agency for a period of not longer than 3 months from the date the department acknowledges receiving from the practical nurse a completed statement, on a form provided by the department, of intention to practice. The statement shall consist of an affidavit by the practical nurse and an affidavit by the employer where the practical nurse intends to practice practical nursing. The affidavit of the nurse and the affidavit of the employer shall contain the information considered by the board necessary for the statement. This subsection does not permit the nurse to practice for more than a 3-month period or in any event after being notified by the board through the department that the application for a license has been denied or in all cases after being notified by the board through the department to cease and desist this practice. Notice shall be given by registered or certified mail to the address of the applicant as it appears in the statement of application."

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-8-418. Licensed practical nursing — application fee. An applicant for a license to practice as a licensed practical nurse shall pay a fee prescribed by the board to the department at the time the application is submitted, which fee shall be returned to the applicant if the application is withdrawn not later than 5 days prior to the date of examination or the final submission to the board of application for endorsement without examination, subject to a deduction of an amount prescribed by the board to be retained by the department.

History: En. Sec. 14, Ch. 243, L. 1953; amd. Sec. 2, Ch. 195, L. 1963; amd. Sec. 122, Ch. 350, L. 1974; amd. Sec. 2, Ch. 215, L. 1975; R.C.M. 1947, 66-1234; amd. Sec. 20, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "shall pay a fee prescribed by the board" for "shall pay a fee of $35" near the beginning of the section; and substituted "subject to a deduction of an amount prescribed by the board" for "subject to a deduction of $5" near the end of the section.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-8-419. Title and abbreviation of licensed practical nurse. Any person who holds a valid license to practice as a licensed practical nurse in this state shall have the right to use the title "Licensed Practical Nurse" and the abbreviation "L.P.N.".

History: En. Sec. 15, Ch. 243, L. 1953; R.C.M. 1947, 66-1235.

37-8-420 through 37-8-429 reserved.

37-8-430. Temporary work permit. (1) The board may issue a temporary work permit for a period not to exceed 90 days to a registered professional nurse or licensed practical nurse who is currently licensed in another state, a territory of the United States, or the District of Columbia and who is an applicant for licensure by endorsement. Such permit is not renewable.

(2) The board may issue a temporary work permit to a graduate of an approved nursing education program or approved practical nursing education program pending the results of the first licensing examination following graduation. Such permit is not renewable.

(3) To protect the public, the board shall adopt such rules as are necessary to limit the practice of persons issued temporary work permits. Such rules shall include a provision that such practice be supervised by a physician, dentist, osteopath, podiatrist, or registered nurse until a license is issued and shall include a definition of supervision.

History: En. Sec. 19, Ch. 248, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-8-431. Renewal of license. (1) The license of a person licensed under this chapter must be annually renewed. Before December 1 of each year, the department shall mail an application form for renewal of license to every person to whom a license was issued or renewed during the year. The applicant shall carefully complete and subscribe the application form and return it to the department with a renewal fee prescribed by the board before January 1.

(2) The board may increase or decrease the annual license fee so as to maintain in the state special revenue fund at all times an adequate amount to be used for the purpose of administering, policing, and enforcing the provisions of this chapter. On receipt of the application and fee, the department

shall verify the accuracy of the application against its record and from other sources the board considers reliable and issue to the applicant a certificate of renewal for the current year beginning January 1 and expiring December 31 following. The certificate of renewal renders the holder a legal practitioner of nursing for the period stated in the certificate of renewal.

(3) A licensee who allows his license to lapse by failing to renew the license may be reinstated by the board on satisfactory explanation for the failure to renew license and on payment of the current renewal fee prescribed by the board.

(4) A person practicing nursing during the time following the date his license has expired is an illegal practitioner and is subject to the penalties provided for violations of this chapter.

(5) The board may establish a reasonable late fee for licensees who fail to renew their license by January 1 as required in subsection (1).

History: En. Sec. 16, Ch. 243, L. 1953; amd. Sec. 3, Ch. 195, L. 1963; amd. Sec. 123, Ch. 350, L. 1974; amd. Sec. 3, Ch. 215, L. 1975; R.C.M. 1947, 66-1236; amd. Sec. 16, Ch. 248, L. 1981; amd. Sec. 21, Ch. 345, L. 1981; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

1981 Amendments: Chapter 248 added subsection (5).

Chapter 345 substituted "a renewal fee prescribed by the board" for "a renewal fee of $10" near the end of (1).

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-8-432. Deposit of fees. Fees and fines collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 17, Ch. 243, L. 1953; amd. Sec. 118, Ch. 147, L. 1963; amd. Sec. 124, Ch. 350, L. 1974; R.C.M. 1947, 66-1237; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

37-8-433 through 37-8-440 reserved.

37-8-441. Denial, revocation, or suspension of license — grounds. Only after compliance with 37-8-442, the board may deny, revoke, or suspend a license to practice nursing or discipline a licensee on proof that the person:

(1) is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing;

(2) is unfit or incompetent by reason of negligence, habit, or other causes;

(3) is habitually intemperate or is addicted to the use of habit-forming drugs;

(4) is mentally or physically incompetent;

(5) is guilty of unprofessional conduct;

(6) has willfully or repeatedly violated this chapter.

History: En. Sec. 20, Ch. 243, L. 1953; amd. Sec. 127, Ch. 350, L. 1974; R.C.M. 1947, 66-1240; amd. Sec. 17, Ch. 248, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "acting under the appropriate administration" after "board" near the beginning of the section; deleted former subsection (2) that read "is guilty of a crime or gross immorality".

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Disciplinary authority of boards — injunctions, 37-1-136.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

37-8-442. Denial, revocation, or suspension of license — procedure. (1) On filing a sworn complaint in writing with the board charging a person with violation of 37-8-441 as a ground for disciplinary action, the board shall fix a time and place for a public hearing before the board.

(2) If the person charged is found guilty of the charges, the board may refuse to grant a license to the applicant or may revoke or suspend a license issued to a licensee.

(3) A revoked or suspended license may be reissued after 1 year, in the discretion of the board.

History: En. Sec. 21, Ch. 243, L. 1953; amd. Sec. 128, Ch. 350, L. 1974; R.C.M. 1947, 66-1241; amd. Sec. 18, Ch. 248, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "to be convened in membership as the five-member board for professional nurses or as the eight-member board for practical nurses, depending on the professional or practical status of the licensee, nurse, or person against whom complaint is made" at the end of (1).

Cross-References

Oath defined, 1-1-201.

Oaths, Title 1, ch. 6.

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Affidavits, Title 26, ch. 1, part 10.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-8-443. Violation of chapter — penalties. (1) It is a misdemeanor for a person (including a corporation, association, or individual) to:

(a) sell or fraudulently obtain or furnish any nursing diploma, license, or record or aid or abet therein;

(b) practice nursing as defined by this chapter under cover of any diploma, license, or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

(c) practice professional nursing unless duly licensed to do so;

(d) practice practical nursing unless duly licensed to do so;

(e) use in connection with the person's name any designation tending to imply that the person is a registered professional nurse or a licensed practical nurse unless duly licensed to so practice;

(f) practice nursing during the time the person's license is suspended, revoked, or on inactive status;

(g) conduct a school of nursing or a course unless the school or course has been approved by the board;

(h) otherwise violate any provision of this chapter.

(2) Such misdemeanor is punishable by a fine of not less than $100 for the first offense. Each subsequent offense is punishable by a fine of $300, by imprisonment of not more than 6 months in the county jail, or by both such fine and imprisonment.

(3) The several district courts within their respective county jurisdictions may hear, try, and determine such misdemeanor and impose in full the punishment and fines prescribed. It is necessary to prove, in any prosecution for

misdemeanor under this section, only a single act prohibited by law or a single holding out or an attempt. It is not necessary to prove a general course of conduct in order to constitute a violation.

History: En. Sec. 23, Ch. 243, L. 1953; amd. Sec. 8, Ch. 291, L. 1967; amd. Sec. 5, Ch. 101, L. 1977; R.C.M. 1947, 66-1243.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

37-8-444. Injunctions. When it appears to the board that any person is violating any of the provisions of this chapter, the board may in its own name bring an action in a court of competent jurisdiction for an injunction against such violation, and the proper courts of this state may enjoin any person, firm, or corporation from violation of this chapter without regard to whether proceedings have been or may be instituted before the board or whether criminal proceedings have been or may be instituted.

History: En. Sec. 24, Ch. 243, L. 1953; R.C.M. 1947, 66-1244.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunctions, 37-1-136.

CHAPTER 9

NURSING HOME ADMINISTRATORS

Part 1 — General

Section
37-9-101. Definitions.

Part 2 — Board of Nursing Home Administrators

37-9-201. Organization and compensation of board.
37-9-202. Exclusive jurisdiction of board.
37-9-203. Duties of board.

Part 3 — Licensing

37-9-301. Qualifications for licensure — examination.
37-9-302. Department to license pursuant to board rules — nontransferability — temporary permit.
37-9-303. Admission of licensees from other states.
37-9-304. Fees.
37-9-305. Renewal of registration and license.
37-9-306. Deposit of fees.
37-9-307 through 37-9-310 reserved.
37-9-311. Revocation and suspension.
37-9-312. Violation.

Chapter Cross-References

Medical services and boarding homes for the aged, Title 7, ch. 34.

Hospitals and related facilities, Title 50, ch. 5.

Adult Foster Family Care Act, Title 53, ch. 5, part 3.

Community-based nursing homes — center for the aged, Title 53, ch. 21, part 4.

Part 1

General

Part Cross-References

Duty of nursing home administrator to report violation of Montana Elder Abuse Prevention Act, 53-5-511.

37-9-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of nursing home administrators provided for in 2-15-1845.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Nursing home administrator" means a person who administers, manages, supervises, or is in general administrative charge of a long-term care facility, whether the individual has an ownership interest in the facility and whether his functions and duties are shared with one or more individuals.

(4) "Long-term care facility" means any skilled nursing facility, nursing home, or intermediate care facility as defined for licensing purposes under state law or the rules for long-term care facilities of the department of health and environmental sciences, whether proprietary or nonprofit, including facilities owned or administered by the state or a political subdivision.

(5) "Inactive nursing home administrator" means an individual who has been licensed in this state as a nursing home administrator and whose license has not been revoked or suspended but who is not actively engaged in nursing home administration.

History: En. Sec. 1, Ch. 363, L. 1969; amd. Sec. 1, Ch. 483, L. 1973; amd. Sec. 305, Ch. 350, L. 1974; R.C.M. 1947, 66-3101; amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

Part 2

Board of Nursing Home Administrators

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1845.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-9-201. Organization and compensation of board. (1) The board shall elect from its membership a chairman, vice-chairman, and secretary-treasurer and shall adopt rules to govern its proceedings.

(2) Each board member shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 7, Ch. 363, L. 1969; amd. Sec. 45, Ch. 439, L. 1975; R.C.M. 1947, 66-3107; amd. Sec. 14, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Substituted (2) for "(2) As compensation for his services each member shall receive $25 a day, in addition to expenses, for each day of actual service in the performance of his duties. All members shall be allowed travel expenses as provided for in 2-18-501 through 2-18-503 and living expenses as may be approved by the board".

37-9-202. Exclusive jurisdiction of board. The board shall have exclusive authority to determine the qualifications, skill, and fitness of any person to serve as an administrator of a nursing home under the provisions of this chapter, and the holder of a license under the provisions of this chapter shall be deemed qualified to serve as the administrator of a nursing home for all purposes.

History: **En. Sec. 8, Ch. 363, L. 1969; R.C.M. 1947, 66-3108.**

37-9-203. Duties of board. The board shall:

(1) develop, impose, and enforce standards which must be met by individuals in order to register and receive a license as a nursing home administrator, designed to ensure that nursing home administrators are individuals of good character and otherwise suitable and, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators;

(2) develop and apply appropriate techniques, including examination and investigation, for determining whether individuals meet the standards;

(3) authorize the department to register and issue licenses to individuals, after application of the techniques, determined to meet the standards;

(4) establish and implement procedures designed to ensure that individuals registered and licensed as nursing home administrators will, during the period that they serve, comply with the requirements of the standards;

(5) conduct a continuing study and investigation of nursing home administrators within the state with a view to the improvement of the standards imposed for the licensing of administrators and of procedures and methods for the enforcement of the standards with respect to nursing home administrators;

(6) conduct or cause to be conducted one or more courses of instruction and training sufficient to meet the requirements of this chapter and make provisions for the conduct of these courses and their accessibility to residents of this state, unless it finds that there are a sufficient number of courses conducted by others within this state to meet the needs of the state; instead, the board may approve courses conducted within and outside of this state sufficient to meet the education and training requirements of this chapter;

(7) prescribe or approve continuing education courses.

History: **En. Sec. 9, Ch. 363, L. 1969; amd. Sec. 6, Ch. 483, L. 1973; amd. Sec. 310, Ch. 350, L. 1974; R.C.M. 1947, 66-3109(part).**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Duties of boards, 37-1-131.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-9-301. Qualifications for licensure — examination. (1) The department shall register and issue licenses to qualified persons as nursing home administrators, and the board shall establish qualification criteria for nursing home administrators. No registration or license shall be issued to a person as a nursing home administrator unless he:

(a) is of good character, of sound physical and mental health, has received a high school diploma or its equivalent;

(b) has satisfactorily completed a course of instruction and training prescribed by the board, which shall be designed and administered to present sufficient knowledge of the needs properly served by long-term care facilities, laws governing the operation of long-term care facilities and the protection of the interests of patients, and the elements of good nursing home administration, or has presented evidence satisfactory to the board of sufficient education, training, or experience in the foregoing fields to administer, supervise, and manage a long-term care facility; and

(c) has passed an examination designed to test for competence in the subject matters referred to in subsection (1)(b).

(2) The minimum standards for qualification shall comply with the requirements, if any, set forth in Title XIX of the Social Security Act (P.L. 90-248, 1967), as amended.

History: En. Sec. 3, Ch. 363, L. 1969; amd. Sec. 10, Ch. 168, L. 1971; amd. Sec. 3, Ch. 483, L. 1973; amd. Sec. 307, Ch. 350, L. 1974; R.C.M. 1947, 66-3103.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Licensing investigation and review — record access, 37-1-135.

37-9-302. Department to license pursuant to board rules — nontransferability — temporary permit. (1) The department shall register and license nursing home administrators under the rules adopted by the board.

(2) A nursing home administrator's registration and license is not transferable and is valid until surrendered for cancellation, suspended, or revoked for violation of this chapter or any other laws or rules relating to the proper administration and management of a long-term care facility.

(3) If the board determines that preliminary qualifications set forth in 37-9-301 will have been met before the next examination, it may authorize the department to issue a temporary permit for a period of 180 days or until the scores of the next examination are announced. No temporary permit may be issued to an applicant after the date of the first examination for which he is eligible.

History: En. Sec. 4, Ch. 363, L. 1969; amd. Sec. 4, Ch. 483, L. 1973; amd. Sec. 308, Ch. 350, L. 1974; R.C.M. 1947, 66-3104(part).

37-9-303. Admission of licensees from other states. The department may issue, at the board's discretion, a nursing home administrator's license without examination to a person who holds a current license as a nursing home administrator from another jurisdiction if the board finds that the standards for licensure in the other jurisdiction are at least substantially equivalent to those prevailing in this state and that the applicant is otherwise qualified.

History: En. Sec. 11, Ch. 363, L. 1969; amd. Sec. 311, Ch. 350, L. 1974; R.C.M. 1947, 66-3111.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-9-304. Fees. (1) Each person who applies for licensure, whether by waiver, examination, or reciprocation, shall pay a fee prescribed by the board at the time of application.

(2) Each person licensed as a nursing home administrator shall pay a license fee in an amount fixed by the board. A license shall expire each year on a date set by rule of the department and shall be renewable annually upon timely payment of the license fee.

(3) Each person registered as an inactive nursing home administrator shall be required to pay a registration fee in the amount fixed by the board. An inactive registration shall expire each year on a date established by rule of the department and shall be renewable annually upon timely payment of the inactive registration fee.

(4) The fee for issuing a duplicate license shall be fixed by the board.

History: En. Sec. 5, Ch. 363, L. 1969; amd. Sec. 5, Ch. 483, L. 1973; R.C.M. 1947, 66-3105; amd. Sec. 22, Ch. 345, L. 1981; amd. Sec. 2, Ch. 390, L. 1983.

Compiler's Comments

1983 Amendment: In (2) and (3), after "shall expire" substituted "each year on a date set by rule of the department" for "on December 31 in the year for which it is issued"; and made minor changes in grammar and tense throughout.

1981 Amendment: Substituted "shall be required to pay a fee prescribed by the board" for "shall be required to pay a fee of $25" in (1); deleted ", not to exceed $100" after "an amount to be fixed by the board" at the end of the first sentence of (2); substituted "a registration fee in the amount fixed by the board" for "a registration fee in the amount of not more than $25" at the end of the first sentence of (3); and substituted "The fee for issuing a duplicate license shall be fixed by the board" for "The fee for issuing a duplicate license shall be $10" in (4).

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-9-305. Renewal of registration and license. Every holder of a nursing home administrator's registration and license shall renew it annually by payment of the required fee for the next subsequent year prior to the expiration date of his currently valid registration and license. Renewals of registrations or licenses shall be granted as a matter of course, providing the holder has completed a continuing education course prescribed or approved by the board; however, if the board finds, after due notice and hearing, that the applicant has acted or failed to act in such a manner or under circumstances as would constitute grounds for suspension or revocation of a registration and license, it shall not issue the renewal.

History: En. Sec. 10, Ch. 363, L. 1969; amd. Sec. 7, Ch. 483, L. 1973; R.C.M. 1947, 66-3110; amd. Sec. 3, Ch. 390, L. 1983.

Compiler's Comments

1983 Amendment: Changed renewal from prior to December 31 to prior to expiration date.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Suspension of license fees for persons in military service, 10-1-605.

37-9-306. Deposit of fees. Fees collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6). This fund may be used to pay the compensation and expenses of members of the board and other expenses necessary to administer this chapter.

History: En. Sec. 6, Ch. 363, L. 1969; amd. Sec. 309, Ch. 350, L. 1974; R.C.M. 1947, 66-3106; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

37-9-307 through 37-9-310 reserved.

37-9-311. Revocation and suspension. (1) The board shall, on receipt of a written and signed complaint, initiate an investigation of the matter contained in the complaint, subject to 37-1-101 and 37-1-121. At its next meeting, the complaint shall be presented to the board, together with the report of investigation and recommendations, and on this basis the board shall determine whether to bring charges and provide for a hearing.

(2) The board shall, for cause, after notice and hearing, revoke or suspend licenses previously issued if the individual holding the license is determined substantially to have failed to conform to the requirements of the standards set pursuant to 37-9-203(1). The board may in its discretion defer execution of its order of revocation or suspension for the purpose of permitting continuity of care for patients when the need for this continuity of care outweighs any harm or danger which might result from the failure of the nursing home administrator to be registered and licensed resulting in the closure of a long-term care facility.

(3) Denial of issuance or renewal, suspension, or revocation under this chapter is subject to review by the board on the timely written request for review within 30 days.

History: (1), (2)En. Sec. 9, Ch. 363, L. 1969; amd. Sec. 6, Ch. 483, L. 1973; amd. Sec. 310, Ch. 350, L. 1974; Sec. 66-3109, R.C.M. 1947; (3)En. Sec. 4, Ch. 363, L. 1969; amd. Sec. 4, Ch. 483, L. 1973; amd. Sec. 308, Ch. 350, L. 1974; Sec. 66-3104, R.C.M. 1947; R.C.M. 1947, 66-3104(part), 66-3109(part).

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

37-9-312. Violation. It shall be unlawful for any person to act or serve in the capacity of a nursing home administrator unless he is the holder of a registration and license as a nursing home administrator, issued in accordance with the provisions of this chapter. A person who violates the provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months or by both such fine and imprisonment.

History: En. Sec. 12, Ch. 363, L. 1969; amd. Sec. 8, Ch. 483, L. 1973; R.C.M. 1947, 66-3112.

CHAPTER 10

OPTOMETRY

Part 1 — General

Section
37-10-101. Definitions — practice of optometry.
37-10-102. Exemptions.
37-10-103. Use of diagnostic drugs not prohibited by pharmacy law.
37-10-104. Public agencies — discrimination prohibited.

Part 2 — Board of Optometrists

37-10-201. Organization — meetings.
37-10-202. Rulemaking power — seal.
37-10-203. Compensation of members — expenses — deposit of moneys.

Part 3 — Licensing

37-10-301. Certificate required for practice — unlawful acts — injunction.
37-10-302. Examination — qualifications — application — issuance of certificate.
37-10-303. Reciprocity.
37-10-304. Course in use of diagnostic drugs required.
37-10-305. Repealed.
37-10-306. Certificate to be displayed in office.
37-10-307. Annual renewal — fee.
37-10-308. Continuing education required for license renewal.
37-10-309 and 37-10-310 reserved.
37-10-311. Revocation — unprofessional conduct.
37-10-312. Duty of county attorneys and attorney general.
37-10-313. Penalty for violations — deposit of fines.

Chapter Cross-References

Professional service corporations, Title 35, ch. 4.

Optometrist to report child abuse, 41-3-201.

Part 1

General

Part Cross-References

Duty of optometrist to report violation of Montana Elder Abuse Prevention Act, 53-5-511.

37-10-101. Definitions — practice of optometry. (1) The practice of optometry is the profession constituting the art and science of visual care and is hereby defined to be any one of the following acts:

(a) the optometric examination or optometric diagnosis of all of those physiological or anatomical parts or functions which consummate the process of human vision to ascertain the presence therein of abnormal conditions or functions which may be optometrically diagnosed, corrected, remedied, or relieved;

(b) the employment of any optometric means, excluding the use of surgery, for the purpose of detecting any condition of the process of vision which may have any significance in a complete optometric eye and vision examination, including the employment and administration of drugs topically applied for examination purposes, limited to cycloplegics, mydriatics, topical anesthetics, dyes such as fluorescein, and for emergency use only, miotics;

(c) the application or prescription of ophthalmic lenses, contact lenses, prisms, orthoptics, visual training, any physical, mechanical, or physiological therapy, and the furnishing or application of any prosthetic or therapeutic devices for the correction or relief of visual anomalies, excluding surgery.

(2) Nothing in subsection (1) allows optometrists to treat diseases of the eye.

(3) Unless the context requires otherwise, in this chapter:

(a) "board" means the board of optometrists provided for in 2-15-1846; and

(b) "department" means the department of commerce provided for in Title 2, chapter 15, part 18.

History: (1), (2)En. Ch. 138, L. 1907; Sec. 1607, Rev. C. 1907; re-en. Sec. 3155, R.C.M. 1921; re-en. Sec. 3155, R.C.M. 1935; amd. Sec. 1, Ch. 252, L. 1959; amd. Sec. 1, Ch. 361, L. 1977; Sec. 66-1301, R.C.M. 1947; (3)En. 66-1301.1 by Sec. 129, Ch. 350, L. 1974; Sec. 66-1301.1, R.C.M. 1947; R.C.M. 1947, 66-1301, 66-1301.1; amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (3)(b); changed internal references to the department and the board.

Cross-References

Exemption from physician's licensing requirement, 37-3-103.

37-10-102. Exemptions. Nothing in this chapter shall be construed to apply to:

(1) physicians and surgeons authorized to practice under the laws of the state of Montana;

(2) a person employed in the office of and acting under the direct personal supervision of a physician or surgeon;

(3) an optician performing the required mechanical work under an order or prescription signed by a duly licensed physician, surgeon, or optometrist;

(4) commissioned officers of the armed forces of the United States performing functions of this chapter in the line of their regular duty; or

(5) persons who sell spectacles or eyeglasses without attempting to traffic upon assumed skill in adapting them to the eye.

History: Ap. p. Ch. 138, L. 1907; Sec. 1621, Rev. C. 1907; re-en. Sec. 3169, R.C.M. 1921; re-en. Sec. 3169, R.C.M. 1935; amd. Sec. 6, Ch. 252, L. 1959; amd. Sec. 1, Ch. 512, L. 1977; Sec. 66-1316, R.C.M. 1947; Ap. p. Ch. 138, L. 1907; Sec. 1608, Rev. C. 1907; re-en. Sec. 3156, R.C.M. 1921; amd. Sec. 1, Ch. 171, L. 1925; re-en. Sec. 3156, R.C.M. 1935; amd. Sec. 1, Ch. 130, L. 1939; amd. Sec. 2, Ch. 252, L. 1959; amd. Sec. 1, Ch. 88, L. 1967; amd. Sec. 130, Ch. 350, L. 1974; Sec. 66-1302, R.C.M. 1947; R.C.M. 1947, 66-1302(part), 66-1316.

37-10-103. Use of diagnostic drugs not prohibited by pharmacy law. The use of drugs by a licensed optometrist for examination purposes as stated in 37-10-101 is not prohibited by Title 37, chapter 7.

History: En. 66-1301.2 by Sec. 2, Ch. 361, L. 1977; R.C.M. 1947, 66-1301.2.

37-10-104. Public agencies — discrimination prohibited. All agencies of the state and its subdivisions administering relief, public assistance, public welfare assistance, social security health insurance, or other health service under the laws of this state shall accept the services of licensed optometrists for any service covered by their licenses rendered to any person receiving benefits from said agents or bodies and shall pay for such services in the same manner as other ocular practitioners rendering similar services. None of the governmental agencies or agents, officials, or employees thereof, including the public schools, shall, in the performance of their duties, discriminate in any way among licensed ocular practitioners.

History: En. 66-1317 by Sec. 7, Ch. 252, L. 1959; R.C.M. 1947, 66-1317.

Cross-References

Illegal discrimination, Title 49, ch. 2.

Governmental Code of Fair Practices, Title 49, ch. 3.

Part 2

Board of Optometrists

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1846.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-10-201. Organization — meetings. The board shall annually choose from its members a president and secretary, both of whom may administer oaths and take affidavits. The board shall meet at least once each year, at Helena or some other place designated by the president, on the fourth Monday of July and, in addition, whenever and wherever the president and secretary call a meeting. The department shall keep a record of the proceedings of the board, which shall be open to public inspection.

History: En. Ch. 138, L. 1907; Sec. 1610, Rev. C. 1907; re-en. Sec. 3158, R.C.M. 1921; amd. Sec. 3, Ch. 171, L. 1925; amd. Sec. 1, Ch. 44, L. 1927; re-en. Sec. 3158, R.C.M. 1935; amd. Sec. 132, Ch. 350, L. 1974; R.C.M. 1947, 66-1304.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Duty of Department to provide facilities, 37-1-101.

Disrupting meeting as disorderly conduct, 45-8-101.

37-10-202. Rulemaking power — seal. (1) The board may adopt rules for the regulation, conduct, supervision, and procedure governing all applicants for certificates of registration as optometrists and the practice of optometry not inconsistent with the provisions of this chapter.

(2) The board shall have a common seal.

History: En. Ch. 138, L. 1907; Sec. 1609, Rev. C. 1907; re-en. Sec. 3157, R.C.M. 1921; amd. Sec. 2, Ch. 171, L. 1925; re-en. Sec. 3157, R.C.M. 1935; amd. Sec. 2, Ch. 130, L. 1939; amd. Sec. 131, Ch. 350, L. 1974; R.C.M. 1947, 66-1303.

Cross-References

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Duties of boards, 37-1-131.

37-10-203. Compensation of members — expenses — deposit of moneys. (1) Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.

(2) Money collected by the department shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Ch. 138, L. 1907; Sec. 1617, Rev. C. 1907; re-en. Sec. 3165, R.C.M. 1921; amd. Sec. 5, Ch. 171, L. 1925; re-en. Sec. 3165, R.C.M. 1935; amd. Sec. 5, Ch. 252, L. 1959; amd.

Sec. 121, Ch. 147, L. 1963; amd. Sec. 23, Ch. 93, L. 1969; amd. Sec. 136, Ch. 350, L. 1974; amd. Sec. 32, Ch. 439, L. 1975; R.C.M. 1947, 66-1311; amd. Sec. 15, Ch. 474, L. 1981; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

1981 Amendment: Substituted language in (1) after "board" for "may receive as compensation the sum of $25 and travel expenses as provided for in 2-18-501 through 2-18-503 for each day actually engaged in the duties of his office".

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-10-301. Certificate required for practice — unlawful acts — injunction. (1) It is unlawful for a person to:

(a) practice optometry in this state unless he has first obtained a certificate of registration;

(b) sell, barter, or offer to sell or barter a certificate of registration issued by the department;

(c) purchase or procure by barter a certificate of registration with intent to use it as evidence of the holder's qualification to practice optometry;

(d) materially alter with fraudulent intent a certificate of registration;

(e) use or attempt to use a certificate of registration which has been purchased, fraudulently issued, counterfeited, or materially altered as a valid certificate of registration;

(f) practice optometry under a false or assumed name;

(g) willfully make a materially false statement in an application for an examination by the department or for a certificate of registration;

(h) advertise by displaying a sign or by otherwise holding himself out to be an optometrist without having at the time a valid certificate of registration;

(i) replace or duplicate ophthalmic lenses with or without a prescription or to dispense ophthalmic lenses from prescriptions without having at the time a valid certificate of registration as an optometrist; however, this subsection does not prevent an optical mechanic from:

(i) doing the merely mechanical work on an ophthalmic lens which is ordered on a prescription signed by a registered optometrist and is dispensed only by the optometrist or a person employed by the optometrist and who does so in the office of and under the direct personal supervision of an optometrist; or

(ii) replacing or duplicating an existing lens for glasses;

(j) take or make measurements for the purpose of fitting or adapting ophthalmic lenses to the human eye without having at the time a valid certificate of registration. A person who takes or makes measurements or uses mechanical devices for this purpose or who, in the sale of spectacles, eyeglasses, or lenses, uses in the testing of the eyes lenses other than the lenses actually sold is practicing optometry. However, this section does not apply to the prescriptions of qualified optometrists when sent to a recognized optical laboratory.

(k) measure, fit, or adapt a lens to direct, contiguous contact to the human eyeball without having at the time a valid certificate of registration as an optometrist.

(2) When the board has reasonable cause to believe that a person is violating this section or a rule issued under this chapter, it may, in addition to other remedies provided in this chapter, bring an action for injunctive relief in district court in the county where the violation occurs to enjoin the person from engaging in or continuing the violation. The department may employ legal counsel to prosecute these actions. In these actions and on notice and hearing, an order or judgment may be entered awarding a temporary restraining order or final injunction as considered proper by the judge of the district court in the county where the violation occurred.

History: En. Ch. 138, L. 1907; Sec. 1608, Rev. C. 1907; re-en. Sec. 3156, R.C.M. 1921; amd. Sec. 1, Ch. 171, L. 1925; re-en. Sec. 3156, R.C.M. 1935; amd. Sec. 1, Ch. 130, L. 1939; amd. Sec. 2, Ch. 252, L. 1959; amd. Sec. 1, Ch. 88, L. 1967; amd. Sec. 130, Ch. 350, L. 1974; R.C.M. 1947, 66-1302(part); amd. Sec. 3, Ch. 66, L. 1981; amd. Sec. 4, Ch. 543, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 66 deleted "and filed it or a certified copy with the county clerk and recorder of the county of his residence" from (1)(a).

Chapter 543 inserted (1)(i)(ii); deleted subsection relating to advertising at a price or stated terms of a price or as being free, examination or treatment of the eyes, furnishing of optometrical services, or furnishing lenses; and inserted "measure, fit, or" in (1)(k).

Cross-References

"Willfully" defined, 1-1-204.

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

37-10-302. Examination — qualifications — application — issuance of certificate. (1) The board shall adopt rules relative to and governing the qualifications of applicants for certificates of registration as optometrists. If the applicant does not meet the requirements of the rules, he is not eligible to take an examination to practice optometry in this state. If the applicant meets the requirements of the rules, he must pass an examination given by the department, subject to 37-1-101. Examinations shall be practical in character and designed to ascertain the applicant's fitness to practice the profession of optometry and shall be conducted in the English language. The department shall publish and distribute the examination requirements for a certificate to practice optometry in this state. The board may accept the grades an applicant has received in the written examinations given by the national board of examiners in optometry.

(2) No person is eligible to take the examination unless he is 18 years of age or older and of good moral character.

(3) No person is eligible to take the examination unless he has certificates of graduation from an accredited high school and from a school of optometry in which the practice and science of optometry is taught in a course of study covering 8 semesters or 4 years of actual attendance and which is accredited

by the international association of boards of examiners in optometry. Instead of the certificates of graduation, an applicant for examination may, with like effect, furnish an affidavit that he has practiced optometry exclusively for a period of at least 6 years in some other state or states.

(4) A person desiring to be examined in optometry shall file an application, in the manner prescribed by the board, at least 4 weeks before the examination is held, and a fee prescribed by the board shall accompany the application.

(5) A person successfully passing the examination shall be registered in a register which shall be kept by the department, and on the payment of a fee prescribed by the board shall receive a certificate of registration signed by the members of the board.

History: En. Ch. 138, L. 1907; Sec. 1611, Rev. C. 1907; amd. Sec. 1, Ch. 128, L. 1917; re-en. Sec. 3159, R.C.M. 1921; amd. Sec. 4, Ch. 171, L. 1925; re-en. Sec. 3159, R.C.M. 1935; amd. Sec. 3, Ch. 130, L. 1939; amd. Sec. 3, Ch. 252, L. 1959; amd. Sec. 24, Ch. 94, L. 1973; amd. Sec. 133, Ch. 350, L. 1974; R.C.M. 1947, 66-1305(1) thru (5); amd. Sec. 3, Ch. 241, L. 1981; amd. Sec. 23, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendments:

Chapter 341 deleted "a citizen of the United States" and inserted "or older" after "18 years of age" in (2).

Chapter 345 substituted "and a fee prescribed by the board" for "and a fee of $25" near the end of (4); and substituted "the payment of a fee prescribed by the board" for "the payment of a fee of $10" in the middle of (5).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Duty of Department to grade examinations, 37-1-101.

Standardized forms, 37-1-104.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-10-303. Reciprocity. If an applicant for a certificate of registration has been admitted to practice optometry in another state and has attained an average of 75% in his examination in the other state, he may, at the discretion of the board, be granted a certificate to practice his profession in this state without examination, on payment of all fees, if the state from which the applicant comes offers equal privileges to applicants for certificates of registration from this state.

History: En. Ch. 138, L. 1907; Sec. 1611, Rev. C. 1907; amd. Sec. 1, Ch. 128, L. 1917; re-en. Sec. 3159, R.C.M. 1921; amd. Sec. 4, Ch. 171, L. 1925; re-en. Sec. 3159, R.C.M. 1935; amd. Sec. 3, Ch. 130, L. 1939; amd. Sec. 3, Ch. 252, L. 1959; amd. Sec. 24, Ch. 94, L. 1973; amd. Sec. 133, Ch. 350, L. 1974; R.C.M. 1947, 66-1305(6).

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-10-304. Course in use of diagnostic drugs required. (1) In addition to the requirements of 37-10-302 or 37-10-303, whichever is applicable, each person desiring to commence the practice of optometry shall satisfactorily complete a course prescribed by the board of medical examiners with consultation and approval by the board of optometrists with particular emphasis on the topical application of diagnostic agents to the eye for the purpose of examination of the human eye and the analysis of ocular functions.

(2) A person presently licensed to practice optometry who wishes to employ diagnostic agents must satisfactorily complete a course referred to in subsection (1) and must pass an examination as provided in subsection (4).

(3) The course referred to in subsection (1) must be conducted by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the national commission on accrediting or the United States commissioner of education. The course must also be approved by the board.

(4) The board shall provide for an examination in competency in the use of diagnostic drugs and shall issue a certificate to those applicants who pass such examination.

History: **En. 66-1305.1 by Sec. 3, Ch. 361, L. 1977; R.C.M. 1947, 66-1305.1.**

Cross-References

Board of Medical Examiners, Title 37, ch. 3, part 2.

37-10-305. Repealed. Sec. 4, Ch. 66, L. 1981.

History: **En. Ch. 138, L. 1907; Sec. 1614, Rev. C. 1907; re-en. Sec. 3162, R.C.M. 1921; re-en. Sec. 3162, R.C.M. 1935; amd. Sec. 4, Ch. 130, L. 1939; amd. Sec. 135, Ch. 350, L. 1974; R.C.M. 1947, 66-1308.**

37-10-306. Certificate to be displayed in office. Every person to whom a certificate of examination or registration is granted shall display the same in a conspicuous part of his office wherein the practice of optometry is conducted.

History: **En. Ch. 138, L. 1907; Sec. 1616, Rev. C. 1907; re-en. Sec. 3164, R.C.M. 1921; re-en. Sec. 3164, R.C.M. 1935; R.C.M. 1947, 66-1310.**

37-10-307. Annual renewal — fee. A registered optometrist who desires to continue the practice of optometry in this state shall, before the license expiration date established by rule of the department, annually pay to the department a renewal fee prescribed by the board in return for which a renewal of registration shall be issued. If a person fails or neglects to procure his annual renewal of registration, his certificate of registration shall be revoked by the board; however, no certificate of registration may be revoked without 90 days' notice having been given to the delinquent, who within this period may renew his certificate of registration on the payment of the renewal fee with a penalty prescribed by the board.

History: **En. Ch. 138, L. 1907; Sec. 1613, Rev. C. 1907; amd. Sec. 2, Ch. 128, L. 1917; re-en. Sec. 3161, R.C.M. 1921; amd. Sec. 4 ½, Ch. 171, L. 1925; re-en. Sec. 3161, R.C.M. 1935; amd. Sec. 4, Ch. 252, L. 1959; amd. Sec. 120, Ch. 147, L. 1963; amd. Sec. 1, Ch. 75, L. 1971; amd. Sec. 134, Ch. 350, L. 1974; R.C.M. 1947, 66-1307; amd. Sec. 24, Ch. 345, L. 1981; amd. Sec. 4, Ch. 390, L. 1983.**

Compiler's Comments

1983 Amendment: Changed payment of renewal fee from before July 2 of each year to before the license expiration date established by rule of the department.

1981 Amendment: Substituted "a renewal fee prescribed by the board" for "a renewal fee not to exceed the sum of $50" in the first sentence; and substituted "a penalty prescribed by the board" for "a penalty of $35" at the end of the section.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-10-308. Continuing education required for license renewal. A licensed optometrist in active practice in this state is required to attend not less than 12 hours annually of scientific clinics, forums, or optometric educational studies as may be provided or approved by the board as a prerequisite for his license renewal. A copy of this section shall be sent to each licensee by the department prior to the license renewal date each year. The board may exempt from this requirement those licensees who submit satisfactory proof that they were prevented from attending educational programs during the preceding year due to illness or for other good reason.

History: **En. 66-1318 by Sec. 1, Ch. 79, L. 1971; amd. Sec. 139, Ch. 350, L. 1974; R.C.M. 1947, 66-1318.**

37-10-309 and 37-10-310 reserved.

37-10-311. Revocation — unprofessional conduct. (1) The board may revoke a certificate of registration for:

(a) physical or mental incompetence;

(b) gross malpractice or repeated malpractice;

(c) a violation of any of the provisions of this chapter or rules or orders of the board; or

(d) unprofessional conduct.

(2) Unprofessional conduct includes:

(a) obtaining a fee by fraud or misrepresentation;

(b) employing, directly or indirectly, a suspended or unlicensed optometrist to perform work covered by this chapter;

(c) directly or indirectly accepting employment to practice optometry from a person not having a valid certificate of registration as an optometrist or accepting employment to practice optometry for or from a company or corporation;

(d) permitting another to use his certificate of registration;

(e) soliciting or sending a solicitor from house to house;

(f) treatment or advice in which untruthful or improbable statements are made;

(g) professing to cure disease;

(h) advertising in which ambiguous or misleading statements are made; or

(i) the use in advertising of the expression "eye specialist" or "specialist on eyes" in connection with the name of an optometrist. This chapter does not prohibit legitimate or truthful advertising by a registered optometrist.

(3) Before a certificate is revoked, the holder shall be given a notice and an opportunity for a hearing.

(4) Any optometrist convicted a second time for violation of the provisions of this chapter or whose certificate of registration or examination has been revoked a second time shall not be permitted to practice optometry in this state.

History: **(1) thru (3)En. Ch. 138, L. 1907; Sec. 1618, Rev. C. 1907; amd. Sec. 3, Ch. 128, L. 1917; re-en. Sec. 3166, R.C.M. 1921; amd. Sec. 6, Ch. 171, L. 1925; re-en. Sec. 3166, R.C.M. 1935; amd. Sec. 5, Ch. 130, L. 1939; amd. Sec. 137, Ch. 350, L. 1974; Sec. 66-1312, R.C.M. 1947; (4)En. Sec. 3166-A by Sec. 2, Ch. 44, L. 1927; re-en. Sec. 3166.1, R.C.M. 1935; Sec. 66-1313, R.C.M. 1947; R.C.M. 1947, 66-1312, 66-1313; amd. Sec. 5, Ch. 543, L. 1981.**

Compiler's Comments

1981 Amendment: Deleted as grounds for revocation: conviction of crime, habitual drunkenness, contagious or infectious disease, gross immorality, or gross ignorance or inefficiency in the profession; inserted as grounds for revocation: physical or mental incompetence, gross malpractice or repeated malpractice, or a violation of any of the provisions of this chapter or rules or orders of the board.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unethical conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duty of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

37-10-312. Duty of county attorneys and attorney general. It is the duty of a county attorney of a county wherein a violation under this chapter, except 37-10-104, is alleged to have occurred to prosecute such violation in the district court in said county. The state attorney general shall appear as counsel for the board in the state supreme court.

History: En. Ch. 138, L. 1907; Sec. 1620, Rev. C. 1907; re-en. Sec. 3168, R.C.M. 1921; re-en. Sec. 3168, R.C.M. 1935; amd. Sec. 1, Ch. 204, L. 1965; R.C.M. 1947, 66-1315.

Cross-References

Duties of Attorney General, 2-15-501.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

37-10-313. Penalty for violations — deposit of fines. A person who violates this chapter, except 37-10-104, or the rules of the board is guilty of a misdemeanor and on conviction shall be fined not less than $200 and not more than $500 or imprisoned in the county jail not exceeding 6 months or both fined and imprisoned. Fines collected shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Ch. 138, L. 1907; Sec. 1619, Rev. C. 1907; re-en. Sec. 3167, R.C.M. 1921; amd. Sec. 8, Ch. 171, L. 1925; re-en. Sec. 3167, R.C.M. 1935; amd. Sec. 6, Ch. 130, L. 1939; amd. Sec. 122, Ch. 147, L. 1963; amd. Sec. 138, Ch. 350, L. 1974; R.C.M. 1947, 66-1314; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

CHAPTER 11

PHYSICAL THERAPY

Part 1 — General

Section
37-11-101. Definitions.
37-11-102. Exemptions.
37-11-103. Restrictions on scope of practice.
37-11-104. Physical therapy — evaluation and treatment.
37-11-105. Supervision of physical therapist assistants.

Part 2 — Duties of Board and Department

37-11-201. General powers — rulemaking power — records.
37-11-202. Investigation and report of violations.
37-11-203. Travel expense — deposit of fees.

Part 3 — Licensing

37-11-301. Unauthorized representation as licensed therapist.
37-11-302. False oath or fraudulent representation to obtain license.
37-11-303. Qualifications of applicants for license.
37-11-304. Application for examination — fee.
37-11-305. Examination — scope.
37-11-306. Issuance of license — certificate as evidence.
37-11-307. Applicants licensed in other states.
37-11-308. Annual renewal of license — fee.
37-11-309. Temporary license.
37-11-310. Foreign-trained applicants.
37-11-311. Display of license.
37-11-312 through 37-11-320 reserved.
37-11-321. Refusal to issue or renew license.
37-11-322. Penalties.

Chapter Cross-References

Professional service corporations, Title 35, ch. 4.

Part 1

General

37-11-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Physical therapy" means the evaluation, treatment, and instruction of human beings to detect, assess, prevent, correct, alleviate, and limit physical disability, bodily malfunction and pain, injury, and any bodily or mental conditions by the use of therapeutic exercise and rehabilitative procedures for the purpose of preventing, correcting, or alleviating a physical or mental disability.

(2) "Physical therapist" or "physiotherapist" means a person who practices physical therapy.

(3) "Physical therapy student" or "physical therapy intern" means an individual enrolled in an accredited physical therapy curriculum and who, as part of his professional, educational, and clinical training, is practicing in a physical therapy setting under the direction, guidance, and observation of a licensed physical therapist.

(4) "Physical therapy assistant" means a person who is a graduate of an accredited curriculum approved by the board and who assists a physical therapist in the practice of physical therapy and whose activities require an understanding of physical therapy.

(5) "Physical therapy practitioner", "physical therapy specialist", "physiotherapy practitioner", or "manual therapists" are equivalent terms, and any derivation of the above or any letters implying the above are equivalent terms; any reference to any one of them in this chapter includes the others but does not include certified corrective therapists or massage therapists.

(6) "Physical therapy aide" means a person who aids in the practice of physical therapy and whose activities require on-the-job training and supervision by a licensed physical therapist who must be available for periodic checks during any procedure or treatment involving a patient.

(7) "Board" means the board of physical therapy examiners provided for in 2-15-1858.

(8) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(9) "Hearing" means the adjudicative proceeding concerning the issuance, denial, suspension, or revocation of a license, after which the appropriate action toward an applicant or licensee is to be determined by the board.

History: En. Sec. 1, Ch. 39, L. 1961; amd. Sec. 241, Ch. 350, L. 1974; R.C.M. 1947, 66-2501(part); amd. Secs. 3, 5, Ch. 491, L. 1979; amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (8); changed internal references to the department and the board.

37-11-102. Exemptions. This chapter shall not be construed to limit or regulate any other business or profession or any services rendered or performed in connection therewith, including osteopathy, chiropractic, chiropractic physiotherapy, massage therapists, masseurs, or Swedish masseurs.

History: En. Sec. 13, Ch. 39, L. 1961; R.C.M. 1947, 66-2513(part).

37-11-103. Restrictions on scope of practice. Nothing in this chapter shall be construed as authorizing a physical therapist, whether licensed or not, to practice medicine, osteopathy, or chiropractic, dentistry, or podiatry; nor shall Title 37, chapter 11, be construed to limit or regulate any other business or profession or any services rendered or performed in connection with physical therapy.

History: En. Sec. 13, Ch. 39, L. 1961; R.C.M. 1947, 66-2513(part); amd. Sec. 7, Ch. 491, L. 1979.

Cross-References

Exemption from physician's licensing requirement, 37-3-103.

37-11-104. Physical therapy — evaluation and treatment. (1) Physical therapy evaluation includes the administration, interpretation, and evaluation of tests and measurements of bodily functions and structures; the development but not the implementation of a plan of treatment; consultative, educational, and other advisory services; and instruction and supervision of supportive personnel.

(2) Treatment employs, for therapeutic effects, physical measures, activities and devices, for preventive and therapeutic purposes, exercises, rehabilitative procedures, massage, mobilization, and physical agents including but not limited to mechanical devices, heat, cold, air, light, water, electricity, and sound.

(3) The evaluation procedures listed in subsection (1) may be performed by a licensed physical therapist without referral from physicians, osteopaths, dentists, or podiatrists, but treatment may be rendered only to patients referred by physicians, osteopaths, dentists, or podiatrists.

History: En. Sec. 4, Ch. 491, L. 1979; amd. Sec. 1, Ch. 240, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "Physical therapy evaluation includes" for "Physical therapy is practiced under referral from physicians, osteopaths, dentists, and podiatrists and includes" at the beginning of (1); substituted "development, but not the implementation, of a plan" for "establishment and modification" in the middle of (1); added subsection (3); and made minor changes in punctuation.

37-11-105. Supervision of physical therapist assistants. A physical therapist assistant must practice under the direct supervision of a licensed physical therapist who is responsible for and participates in a patient's care.

History: En. Sec. 6, Ch. 491, L. 1979.

Part 2

Duties of Board and Department

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1859.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-11-201. General powers — rulemaking power — records. (1) The board may:

(a) adopt rules to carry this chapter into effect;

(b) grant, suspend, and revoke licenses;

(c) issue subpoenas requiring the attendance of witnesses or the production of books and papers; and

(d) take any other disciplinary action necessary to protect the public.

(2) The board shall:

(a) examine applicants for licenses twice a year at reasonable places and times determined by the board;

(b) review the qualifications of applicants who are approved for examination for licensure; and

(c) conduct written examinations that measure the qualifications of individual applicants along with any oral or practical examinations when determined by the board to be appropriate.

(3) The department shall keep a record of the board's proceedings under this chapter and a register of persons licensed under it. The register shall show the name of every living licensed physical therapist, his last-known place of business, last-known place of residence, and the date and number of his license and certificate as a licensed physical therapist.

(4) The department shall, during the month of April every year in which the renewal of licenses is required, compile a list of licensed physical therapists authorized to practice physical therapy in the state and shall mail, upon request, a copy of that list to the superintendent of every known hospital and every person licensed to practice medicine and surgery in the state. An interested person in the state is entitled to obtain a copy of the list on application to the department and payment of an amount not in excess of the cost of the list so furnished.

(5) The department may change addresses and surnames on the licensee's records only on the specific written request by the individual licensee.

History: En. Sec. 14, Ch. 39, L. 1961; amd. Sec. 249, Ch. 350, L. 1974; R.C.M. 1947, 66-2514; amd. Sec. 1, Ch. 449, L. 1979; amd. Sec. 8, Ch. 491, L. 1979.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Power of agencies to issue subpoenas, 2-4-104.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Public records, Title 2, ch. 6.

Prohibition on distribution or sale of mailing lists, 2-6-109.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

Duties of Department, 37-1-101.

Duties of boards, 37-1-131.

37-11-202. Investigation and report of violations. (1) The board shall:

(a) investigate every alleged violation of this chapter coming to its notice;

(b) report to the proper authority all cases that, in the judgment of the board, warrant prosecution;

(c) formulate a written complaint process for use in reporting alleged violations;

(d) assist the proper county attorney or the attorney general in the prosecution of all persons who violate any provision of Title 37, chapter 11.

(2) The attorney general shall serve as attorney for the board.

History: En. Sec. 15, Ch. 39, L. 1961; R.C.M. 1947, 66-2515; amd. Sec. 9, Ch. 491, L. 1979.

Cross-References

Duties of Attorney General, 2-15-501.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Licensing investigation and review — record access, 37-1-135.

37-11-203. Travel expense — deposit of fees. (1) Each board member shall receive compensation and travel expenses as provided for in 37-1-133.

(2) All fees collected by the department shall be deposited in the state special revenue account for the use of the board, subject to 37-1-101(6). The department shall keep an accurate account of funds received and expenditures made from the account.

(3) The board of medical examiners shall transfer funds in the state special revenue account collected after January 1, 1979, which were derived from the examination and licensure or relicensure of physical therapists in this state to the state special revenue account designated as the "physical therapist account".

History: En. Sec. 10, Ch. 491, L. 1979; amd. Sec. 16, Ch. 474, L. 1981; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted references to state special revenue account for references to earmarked revenue account.

1981 Amendment: Substituted language in (1) after "shall" for "be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503 for each day actually engaged in the duties of his office".

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-11-301. Unauthorized representation as licensed therapist. A person who is not licensed under this chapter as a physical therapist or whose license has been suspended or revoked or whose license has lapsed and has not been revived who uses in connection with his name the words or letters "L.P.T.", "Licensed Physical Therapist", "P.T.", "Physical Therapist", "R.P.T.", "Registered Physical Therapist", or any other letters, words, or insignia indicating or implying that he is a licensed physical therapist or who in any way, orally or in writing or in print or by sign, directly or by implication, represents himself as a physical therapist shall be guilty of a misdemeanor.

History: En. Sec. 11, Ch. 39, L. 1961; R.C.M. 1947, 66-2511; amd. Sec. 11, Ch. 491, L. 1979.

37-11-302. False oath or fraudulent representation to obtain license. A person who makes a willfully false oath or affirmation in any case in which an oath or affirmation is required by this chapter or who obtains or attempts to obtain a license by any fraudulent representation shall be guilty of a misdemeanor.

History: En. Sec. 12, Ch. 39, L. 1961; R.C.M. 1947, 66-2512.

Cross-References

Oath defined, 1-1-201.
Oaths, Title 1, ch. 6.
Perjury, 45-7-201.
False swearing, 45-7-202.

37-11-303. Qualifications of applicants for license. To be eligible for a license as a physical therapist, an applicant must:

(1) be of good moral character and at least 18 years of age;

(2) have graduated from an accredited school of physical therapy approved by the board;

(3) either:

(a) pass to the satisfaction of the board a written examination prescribed by the board and, if considered necessary, an oral interview to determine the fitness of the applicant to practice as a physical therapist; or

(b) be entitled to a license without examination under 37-11-307.

History: En. Sec. 2, Ch. 39, L. 1961; amd. Sec. 8, Ch. 168, L. 1971; amd. Sec. 242, Ch. 350, L. 1974; amd. Sec. 24, Ch. 101, L. 1977; R.C.M. 1947, 66-2502; amd. Sec. 12, Ch. 491, L. 1979; amd. Sec. 1, Ch. 456, L. 1981.

Compiler's Comments

1981 Amendment: Substituted subsection (3)(a) for "pass to the satisfaction of the board an examination to determine his fitness for practice as a physical therapist".

Cross-References

Licensing investigation and review — record access, 37-1-135.

37-11-304. Application for examination — fee. (1) Unless entitled to a license under 37-11-307, a person who desires to be licensed as a physical therapist shall apply to the department in writing, on a form furnished by the department. He shall embody in that application evidence under oath, satisfactory to the board, of his possessing the qualifications preliminary to examination required by 37-11-303.

(2) He shall pay to the department at the time of filing his application a fee as established by the board by rule. Said fee shall be commensurate with the cost of the examination and its administration and shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

(3) Anyone failing to pass the required examination is entitled to a second examination within 6 months.

History: **En. Sec. 3, Ch. 39, L. 1961; amd. Sec. 133, Ch. 147, L. 1963; amd. Sec. 1, Ch. 227, L. 1974; amd. Sec. 243, Ch. 350, L. 1974; R.C.M. 1947, 66-2503; amd. Sec. 1, Ch. 277, L. 1983.**

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Cross-References

Oath defined, 1-1-201.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Affidavits, Title 26, ch. 1, part 10.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-11-305. Examination — scope. The department shall, subject to 37-1-101, examine applicants for licenses as physical therapists at times and places the board determines. The examinations shall embrace subjects the board considers necessary to determine the applicant's fitness.

History: **En. Sec. 6, Ch. 39, L. 1961; amd. Sec. 245, Ch. 350, L. 1974; R.C.M. 1947, 66-2506.**

37-11-306. Issuance of license — certificate as evidence. The department shall license as a physical therapist each applicant who proves to the satisfaction of the board his fitness for a license under this chapter. The department shall issue to each person licensed a license certificate, which is prima facie evidence of the right of the person to whom it is issued to represent himself as a licensed physical therapist, subject to the conditions and limitations of this chapter.

History: **En. Sec. 7, Ch. 39, L. 1961; amd. Sec. 246, Ch. 350, L. 1974; R.C.M. 1947, 66-2507.**

37-11-307. Applicants licensed in other states. The board may, in its discretion, authorize the department to license as a physical therapist, without examination, on the payment of the required fee as established by the board, an applicant for license who is a physical therapist licensed under the laws of another state or territory if the applicant has met the same requirements as applicants licensed by examination under this chapter. Those applicants who have been licensed in another state or territory by examination other than the examination recognized under this chapter may be considered for licensure by the board if the requirements for a physical therapy license in the state or territory in which the applicant was tested were at least equal to those requirements in force in this state at that time. However, the board may require a written, oral, or practical examination and may require continued study or refresher courses.

History: **En. Sec. 5, Ch. 39, L. 1961; amd. Sec. 2, Ch. 227, L. 1974; amd. Sec. 244, Ch. 350, L. 1974; R.C.M. 1947, 66-2505; amd. Sec. 13, Ch. 491, L. 1979; amd. Sec. 25, Ch. 345, L. 1981; amd. Sec. 1, Ch. 454, L. 1983.**

Compiler's Comments

1983 Amendment: In first sentence, substituted "if the applicant has met the same requirements as applicants licensed by examination under this chapter" for "if the requirements for a license for physical therapists in the state or territory in which the applicant was licensed were at the date of his license substantially equal to the requirements in force in this state"; inserted second sentence; and at end of section inserted "and may require continued study or refresher courses".

1981 Amendment: Deleted ", not to exceed $100," after "on the payment of the required fee" near the beginning of the section.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-11-308. Annual renewal of license — fee. A licensed physical therapist shall, during January, apply to the department for a renewal of his license and pay a fee which shall be set by board rule. A license that is not renewed before April every year automatically lapses. The board may, in its discretion, revive and renew a lapsed license on the payment of all past unpaid renewal fees or a late renewal fee.

History: En. Sec. 8, Ch. 39, L. 1961; amd. Sec. 1, Ch. 353, L. 1969; amd. Sec. 247, Ch. 350, L. 1974; R.C.M. 1947, 66-2508; amd. Sec. 14, Ch. 491, L. 1979; amd. Sec. 26, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "not to exceed $50" after "pay a fee" in the first sentence of the section.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-11-309. Temporary license. (1) On payment to the department of a fee which shall be set by board rule and the submission of a written application on forms provided by it, the department shall issue, without examination, a temporary license to practice physical therapy in this state for a period not to exceed 1 year to a person who meets the qualifications set forth in 37-11-303, on submission by the person of evidence satisfactory to the board that he is in this state on a temporary basis to assist in a case of medical emergency or to engage in a special physical therapy project.

(2) The board may, upon receipt of an application for examination and upon receipt of a temporary license fee not to exceed $100, issue a temporary license to a person who has applied for a license under this chapter and who is, in the judgment of the board, eligible to take the examination provided for in 37-11-303. This applicant must work under the direction, guidance, and observation of a licensed physical therapist. This temporary license is available to an applicant only with respect to his first application. The temporary license shall expire when the board makes a final determination on the applicant's examination scores.

(3) The board may require an oral interview of all persons applying for a temporary license.

(4) The board shall adopt necessary and reasonable rules governing the procedures for applying and issuing temporary licenses.

History: En. Sec. 10, Ch. 39, L. 1961; amd. Sec. 248, Ch. 350, L. 1974; R.C.M. 1947, 66-2510; amd. Sec. 15, Ch. 491, L. 1979; amd. Sec. 27, Ch. 345, L. 1981; amd. Sec. 2, Ch. 456, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 345 deleted "not to exceed $100" after "On payment to the department of a fee" at the beginning of (1).

Chapter 456, in (2), substituted "The board may ... $100" for "on the submission of a written application on forms provided by it, the department shall", inserted the second sentence, substituted the last sentence for "for a license under 37-11-307, or to a foreign-trained physical therapist, and the license expires when the board makes a final determination with respect to the application"; and added subsections (3) and (4).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-11-310. Foreign-trained applicants. The foreign-trained physical therapist applicant's transcripts will be evaluated by a board-approved agency which reviews credentials. Upon receipt of this evaluation the board shall determine whether the number of academic credits awarded meets equivalent educational standards for a physical therapist degree or certificate established by an American physical therapist association accredited school of physical therapy. If the applicant's professional education credit hours are approved by the board, the applicant is eligible for a temporary license prior to examination.

History: En. Sec. 16, Ch. 491, L. 1979; amd. Sec. 2, Ch. 454, L. 1983.

Compiler's Comments

1983 Amendment: Substituted present language for: "The foreign-trained physical therapist applicant's transcripts will be evaluated by the board. The board will compare the applicant's transcript to the standards set by the American physical therapy association. If the applicant's professional education credit hours are approved by the board and the school the applicant attended was approved by the American physical therapy association at the time the applicant attended, the applicant is eligible for a temporary license prior to examination."

Cross-References

Nondiscrimination in licensing, 49-3-204.

37-11-311. Display of license. Each licensee shall display his original license or an official duplicate issued by the department and a renewal certificate in a conspicuous place in the principal office where he practices physical therapy. A reproduction displayed in lieu of the above is not authorized unless the reproduction is signed and notarized by a notary public.

History: En. Sec. 18, Ch. 491, L. 1979.

37-11-312 through 37-11-320 reserved.

37-11-321. Refusal to issue or renew license. The board, after due notice and hearing, may refuse to license any applicant, and may refuse to renew, may suspend, may revoke, or take lesser disciplinary action on the license of any licensed person who:

(1) is habitually intoxicated or is addicted to the use of narcotic drugs;

(2) has been convicted of violating any state or federal narcotic law, subject to chapter 1, part 2, of this title;

(3) is, in the judgment of the board, guilty of immoral or unprofessional conduct as defined by board rule;

(4) has been convicted of any crime involving moral turpitude, subject to chapter 1, part 2, of this title;

(5) is guilty, in the judgment of the board, of gross negligence in his practice as a physical therapist;

(6) has obtained or attempted to obtain licensure by fraud or material misrepresentation;

(7) has been declared to be seriously mentally ill by a court of competent jurisdiction and has not thereafter been released from treatment and declared not to be seriously mentally ill;

(8) has treated or undertaken to treat ailments of human beings otherwise than by physical therapy;

(9) is guilty, in the judgment of the board, of conduct unbecoming a person licensed as a physical therapist or of conduct detrimental to the best interests of the public; or

(10) has practiced physical therapy beyond the scope and limitation of his training and education.

History: En. Sec. 9, Ch. 39, L. 1961; amd. Sec. 25, Ch. 101, L. 1977; R.C.M. 1947, 66-2509; amd. Sec. 17, Ch. 491, L. 1979.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Duty of Department to investigate unethical conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-11-322. Penalties. Any person who knowingly violates any provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 or more than $500 or by imprisonment in the county jail for a term of not less than 30 days or more than 6 months or by both such fine and imprisonment.

History: En. Sec. 16, Ch. 39, L. 1961; R.C.M. 1947, 66-2516.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

CHAPTER 12

CHIROPRACTIC

Part 1 — General

Section

37-12-101. Definitions — practice of chiropractic.
37-12-102. Exemptions — limitations on construction of chapter.
37-12-103. Duties of chiropractic practitioners.
37-12-104. Rights and limitations governing practice.

Part 2 — Board of Chiropractors

37-12-201. Organization of board — meetings — powers and duties.
37-12-202. Compensation of members — expenses.

Part 3 — Licensing

37-12-301. Unlawful to practice without license.
37-12-302. Applications — qualifications — fees.
37-12-303. Temporary permit.
37-12-304. Examinations — subjects.
37-12-305. Licensing chiropractors from other states without examination.
37-12-306. Repealed.
37-12-307. Annual renewal of license — fee — continuing education required.
37-12-308. Deposit of fees — accounting.
37-12-309. Municipal license fee prohibited.
37-12-310 through 37-12-320 reserved.
37-12-321. Unprofessional conduct.
37-12-322. Revocation or suspension of license.
37-12-323. Reconsideration of board action — fee for restoration of license.
37-12-324. Penalty for violation.

Chapter Cross-References

Professional service corporations, Title 35, ch. 4.

Part 1

General

Part Cross-References

Duty of chiropractor to report violation of Montana Elder Abuse Prevention Act, 53-5-511.

37-12-101. Definitions — practice of chiropractic. (1) Unless the context requires otherwise, in this chapter the following definitions apply:

(a) "Board" means the board of chiropractors provided for in 2-15-1847.

(b) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(2) "Chiropractic" is the system of specific adjustment or manipulation of the articulations and tissues of the body, particularly of the spinal column, for the correction of nerve interference and includes the use of recognized diagnostic and treatment methods as taught in chiropractic colleges but does not include surgery or the prescription or use of drugs.

History: (1)En. 66-501.1 by Sec. 46, Ch. 350, L. 1974; Sec. 66-501.1, R.C.M. 1947; (2)En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3144, R.C.M. 1921; re-en. Sec. 3144, R.C.M. 1935; amd. Sec. 1, Ch. 579, L. 1977; Sec. 66-507, R.C.M. 1947; R.C.M. 1947, 66-501.1, 66-507(1); amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (1)(b); changed internal references to the department and the board.

37-12-102. Exemptions — limitations on construction of chapter. Nothing in this chapter shall be construed to restrain or restrict any legally licensed physician or surgeon or any legally licensed osteopath in the practice of his profession. The practice of chiropractic as herein defined is hereby declared not to be the practice of medicine or surgery within the meaning of the laws of the state of Montana defining the same and is further declared not to be the practice of osteopathy within the meaning of the laws of the state of Montana defining the same. Duly licensed chiropractors shall not be subject to the provisions of chapter 5 of this title or liable to any prosecution thereunder.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3154, R.C.M. 1921; re-en. Sec. 3154, R.C.M. 1935; R.C.M. 1947, 66-517.

Cross-References

Practice of medicine defined, 37-3-102.

Exemption from physician's licensing requirements, 37-3-103.

Practice of osteopathy defined, 37-5-101.

37-12-103. Duties of chiropractic practitioners. Chiropractic practitioners shall observe and be subject to all state and municipal regulations relating to the control of contagious and infectious diseases, sign death and birth certificates, and as to any and all matters pertaining to public health, report to the proper health officers the same as other practitioners.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3145, R.C.M. 1921; re-en. Sec. 3145, R.C.M. 1935; R.C.M. 1947, 66-508.

Cross-References

Reporting required by health care professionals, Title 37, ch. 2, part 3.

Duty of chiropractors to report child abuse, 41-3-201.

37-12-104. Rights and limitations governing practice. (1) Chiropractors licensed under this chapter shall have the right to practice that science defined as chiropractic under 37-12-101 in accordance with the method, thought, and practice of chiropractors, and they shall be permitted to use the prefix "Dr." or "Doctor" as a title but shall not in any way imply that they are regular physicians or surgeons. They shall not prescribe for or administer to any person any medicine or drugs or practice medicine or surgery or osteopathy, except that the use of antiseptics for purposes of sanitation and hygiene and to prevent infection and contagion shall be permitted.

(2) Licensed chiropractors may diagnose, palpate, and treat the human body by the application of manipulative, manual, mechanical, and dietetic methods, including chiropractic physiotherapy, the use of supportive appliances, analytical instruments, and diagnostic x-ray in accordance with guidelines promulgated or approved by state or federal health regulatory agencies.

History: (1)En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3146, R.C.M. 1921; re-en. Sec. 3146, R.C.M. 1935; Sec. 66-509, R.C.M. 1947; (2)En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3144, R.C.M. 1921; re-en. Sec. 3144, R.C.M. 1935; amd. Sec. 1, Ch. 579, L. 1977; Sec. 66-507, R.C.M. 1947; R.C.M. 1947, 66-507(2), 66-509.

Part 2

Board of Chiropractors

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1847.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-12-201. Organization of board — meetings — powers and duties. (1) The board shall elect annually a president, vice-president, and secretary-treasurer from its membership.

(2) The board shall hold a regular meeting each year at Helena and shall hold special meetings at times and places as a majority of the board designates. Not more than four meetings may be held in any one year. A majority of the board constitutes a quorum.

(3) The board may administer oaths, take affidavits, summon witnesses, and take testimony as to matters coming within the scope of the board. It shall adopt a seal which shall be affixed to licenses issued and shall make rules necessary for the performance of its duties. It shall make a schedule of minimum educational requirements, which are without prejudice, partiality, or discrimination, as to the different schools of chiropractic. The department shall keep a record of the proceedings of the board which shall at all times be open to public inspection.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3140, R.C.M. 1921; re-en. Sec. 3140, R.C.M. 1935; amd. Sec. 47, Ch. 350, L. 1974; amd. Sec. 1, Ch. 432, L. 1977; R.C.M. 1947, 66-503.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Oath defined, 1-1-201.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Power of agencies to issue subpoenas, 2-4-104.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Public records, Title 2, ch. 6.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Affidavits, Title 26, ch. 1, part 10.

Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

Duties of Department, 37-1-101.

Duties of boards, 37-1-131.

Perjury and other falsification in official matters, Title 45, ch. 7, part 2.

Disrupting meeting as disorderly conduct, 45-8-101.

Nondiscrimination in licensing, 49-3-204.

37-12-202. Compensation of members — expenses. The members of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3150, R.C.M. 1921; re-en. Sec. 3150, R.C.M. 1935; amd. Sec. 4, Ch. 188, L. 1961; amd. Sec. 142, Ch. 147, L. 1963; amd. Sec. 20, Ch. 93, L. 1969; amd. sec. 54, Ch. 350, L. 1974; amd. Sec. 26, Ch. 439, L. 1975; R.C.M. 1947, 66-513(3); amd. Sec. 17, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Substituted language after "receive" for "$25 for each day during which they are actually engaged in the discharge of their duties plus mileage and reimbursement for travel expenses as provided for in 2-18-501 through 2-18-503".

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-12-301. Unlawful to practice without license. It is unlawful for a person to practice chiropractic in this state without first obtaining a license under this chapter.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3141, R.C.M. 1921; re-en. Sec. 3141, R.C.M. 1935; amd. Sec. 48, Ch. 350, L. 1974; amd. Sec. 2, Ch. 432, L. 1977; R.C.M. 1947, 66-504(1).

37-12-302. Applications — qualifications — fees. (1) A person wishing to practice chiropractic in this state shall make application to the department, on the form and in the manner prescribed by the board, at least 21 days prior to a meeting of the board. Each applicant shall be a graduate of a college of chiropractic approved by the board, in which he has attended a course of study of 4 school years of not less than 9 months each, and shall present evidence showing completion of 2 full academic years of college or university work from an institution acceptable to the board of regents of higher education. Application shall be made in writing and shall be sworn to by an officer authorized to administer oaths and shall recite the history of applicant's educational qualifications, how long he has studied chiropractic, of what school or college he is a graduate, and the length of time he has been engaged in practice. The application shall be accompanied with proofs by diplomas, certificates, etc., and satisfactory evidence of good character and reputation.

(2) There shall be paid to the department by an applicant for a license a fee prescribed by the board. Like fees shall be paid for a subsequent examination and application.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 224, L. 1919; re-en. Sec. 3142, R.C.M. 1921; amd. Sec. 1, Ch. 129, L. 1933; re-en. Sec. 3142, R.C.M. 1935; amd. Sec. 1, Ch. 123, L. 1951; amd. Sec. 1, Ch. 178, L. 1955; amd. Sec. 1, Ch. 188, L. 1961; amd. Sec. 49, Ch. 350, L. 1974; amd. Sec. 3, Ch. 432, L. 1977; R.C.M. 1947, 66-505; amd. Sec. 28, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "a license fee prescribed by the board" for "a license fee of $50" at the end of the first sentence of (2).

Cross-References

Oath defined, 1-1-201.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oath, Title 1, ch. 6.

Affidavits, Title 26, ch. 1, part 10.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-12-303. Temporary permit. When application for examination for license is filed with the department under 37-12-302, the board may authorize the department to issue a temporary permit to practice.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3141, R.C.M. 1921; re-en. Sec. 3141, R.C.M. 1935; amd. Sec. 48, Ch. 350, L. 1974; amd. Sec. 2, Ch. 432, L. 1977; R.C.M. 1947, 66-504(2).

37-12-304. Examinations — subjects. (1) Examinations for a license to practice chiropractic shall be made by the department, subject to 37-1-101, according to the method considered by the board to be the most practicable and expeditious to test the applicant's qualifications. The application shall be designated by a number instead of the applicant's name so that the identity will not be discovered or disclosed until after the examination papers are graded.

(2) Examinations shall be made in writing, on subjects taught in chiropractic colleges, including the use of x-ray equipment and radiographs. Additional subjects may be prescribed by the board to meet new conditions. A license shall be granted to applicants who correctly answer 75% of all questions asked, including x-ray questions. If an applicant fails to answer correctly 60% of the questions on any branch of the examination, he is not entitled to a license.

(3) The board may accept the grades an applicant has received in the written examinations given by the national board of chiropractic examiners and may authorize the department to issue a license without further written examination to an applicant who holds a valid certificate from the national board of chiropractic examiners if the applicant meets the other requirements of this chapter. The board may require an applicant to satisfactorily pass a clinical proficiency examination before being issued a license, even though he holds a valid certificate from the national board of chiropractic examiners.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3143, R.C.M. 1921; re-en. Sec. 3143, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1967; amd. Sec. 50, Ch. 350, L. 1974; amd. Sec. 4, Ch. 432, L. 1977; R.C.M. 1947, 66-506; amd. Sec. 1, Ch. 347, L. 1983.

Compiler's Comments

1983 Amendment: In (2), in first sentence changed the examination subjects from "anatomy, physiology, symptomatology, diagnosis, chiropractic orthopedy, principles of chiropractic and adjusting, sanitation and hygiene, urinalysis, gynecology, and palpation" to "subjects taught in chiropractic colleges, including the use of x-ray equipment and radiographs" and at end of second sentence inserted "including x-ray questions"; and in (3) changed the examination requirement, which formerly provided that applicant "satisfactorily passes a clinical proficiency examination before the department, subject to 37-1-101".

37-12-305. Licensing chiropractors from other states without examination. Persons licensed to practice chiropractic under the laws of any other state having chiropractic educational requirements equal to this chapter may, in the discretion of the board, be issued a license to practice in this state without examination upon payment of the fee prescribed by the board as herein provided.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3152, R.C.M. 1921; re-en. Sec. 3152, R.C.M. 1935; amd. Sec. 5, Ch. 188, L. 1961; R.C.M. 1947, 66-515; amd. Sec. 29, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "upon payment of the fee prescribed by the board" for "upon payment of the fee of $50" near the end of the section.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-12-306. Repealed. Sec. 4, Ch. 66, L. 1981.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3148, R.C.M. 1921; re-en. Sec. 3148, R.C.M. 1935; amd. Sec. 52, Ch. 350, L. 1974; R.C.M. 1947, 66-511.

37-12-307. Annual renewal of license — fee — continuing education required. A license expires on September 1 of each year and shall be renewed by the department on payment of a renewal fee, as set by the board, and the presentation of evidence satisfactory to the board that the licensee, in the year preceding the application for renewal, attended and successfully completed a postgraduate educational program for chiropractors approved by the board. All applicants for renewal who have not paid the renewal fee prior to October 1 of each year shall pay an additional late fee prescribed by the board.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 90, L. 1921; re-en. Sec. 3149, R.C.M. 1921; amd. Sec. 2, Ch. 129, L. 1933; re-en. Sec. 3149, R.C.M. 1935; amd. Sec. 2, Ch. 123, L. 1951; amd. Sec. 3, Ch. 188, L. 1961; amd. Sec. 1, Ch. 8, L. 1965; amd. Sec. 53, Ch. 350, L. 1974; amd. Sec. 1, Ch. 516, L. 1977; R.C.M. 1947, 66-512(1); amd. Sec. 4, Ch. 155, L. 1981; amd. Sec. 30, Ch. 345, L. 1981; amd. Sec. 1, Ch. 344, L. 1983.

Compiler's Comments

1983 Amendment: Inserted "approved by the board" after "educational program for chiropractors"; inserted last sentence.

1981 Amendments: Chapter 155 deleted the course description following "postgraduate educational program for chiropractors" and deleted the last sentence pertaining to renewal of licenses without attending the continuing education programs.

Chapter 345 deleted "of not more than $50," after "on payment of a renewal fee" in the first sentence of the section.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-12-308. Deposit of fees — accounting. (1) Fees collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

(2) The department shall keep an accurate account of funds received and vouchers issued by the department.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3150, R.C.M. 1921; re-en. Sec. 3150, R.C.M. 1935; amd. Sec. 4, Ch. 188, L.

1961; amd. Sec. 142, Ch. 147, L. 1963; amd. Sec. 20, Ch. 93, L. 1969; amd. sec. 54, Ch. 350, L. 1974; amd. Sec. 26, Ch. 439, L. 1975; R.C.M. 1947, 66-513(1), (2); amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

37-12-309. Municipal license fee prohibited. No license fee or license tax may be imposed upon doctors of chiropractic as a condition to the practice of their profession by a municipality or any other political subdivision of the state.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 90, L. 1921; re-en. Sec. 3149, R.C.M. 1921; amd. Sec. 2, Ch. 129, L. 1933; re-en. Sec. 3149, R.C.M. 1935; amd. Sec. 2, Ch. 123, L. 1951; amd. Sec. 3, Ch. 188, L. 1961; amd. Sec. 1, Ch. 8, L. 1965; amd. Sec. 53, Ch. 350, L. 1974; amd. Sec. 1, Ch. 516, L. 1977; R.C.M. 1947, 66-512(2).

37-12-310 through 37-12-320 reserved.

37-12-321. Unprofessional conduct. As used in this chapter, "unprofessional conduct" means:

(1) resorting to fraud, misrepresentation, or deception in applying for or securing a license or in taking the examination provided for in this chapter;

(2) obtaining any form of compensation, directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition can be cured;

(3) practicing chiropractic under a false or assumed name or impersonating another practitioner of like or different name;

(4) knowingly disobeying a rule of the board;

(5) conviction of a criminal offense involving moral turpitude. A certified copy of the judgment of conviction is conclusive evidence of the conviction. This subsection is subject to chapter 1, part 2, of this title.

(6) habitual intemperance or excessive use of narcotic drugs, alcohol, or any other substance to the extent that such use impairs the user's physical or mental professional capability;

(7) administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors;

(8) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization;

(9) testifying in court on a contingency basis;

(10) conspiring to misrepresent or knowingly misrepresenting physical conditions in order to increase or decrease a settlement or award;

(11) aiding or abetting in the practice of chiropractic a person not licensed to practice chiropractic or a person whose license is suspended;

(12) practicing chiropractic as the partner, agent, or employee of or in joint venture with a person not licensed to practice chiropractic in this state. However, this does not prohibit incorporation as a professional service corporation under Title 35, chapter 4, or prevent a single consultation with or a single treatment by a person licensed to practice chiropractic in another state or territory of the United States or a foreign country.

(13) violating, attempting or conspiring to violate, or aiding or abetting in the violation of this chapter or the rules adopted under it; or

(14) conduct unbecoming a person licensed to practice chiropractic or detrimental to the best interests of the public.

History: **En. 66-510.1 by Sec. 2, Ch. 516, L. 1977; R.C.M. 1947, 66-510.1.**

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unethical conduct, 37-1-101.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-12-322. Revocation or suspension of license. (1) The board may make an investigation whenever it is brought to its attention that there is reason to suspect that a person licensed to practice chiropractic:

(a) has a mental or physical condition such that he is unable to safely engage in the practice of chiropractic;

(b) has been declared incompetent or seriously mentally ill by a court of competent jurisdiction and thereafter has not been declared competent or released from supervision;

(c) has procured his license through mistake;

(d) has been guilty of unprofessional conduct;

(e) has practiced chiropractic while his license was suspended or revoked;

(f) has while under probation violated its terms.

(2) The investigation shall be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may include requiring the person to submit to a physical or mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine the hospital records and reports of the licensee as part of the examination, and copies of these shall be released to the board on written request. If the board has reasonable cause to believe that this probability exists, the department shall mail to the person at his last address of record with the department, a specification of the charges against him, together with a written notice of the time and place of the hearing on such charges, advising him that he may be present in person and with counsel if he so desires to offer evidence and be heard in his defense. The time fixed for hearing may not be less than 30 days from the date of mailing the notice.

(3) Any person, including a member of the board, may file a sworn complaint with the department against a licensed chiropractor charging him with any of the offenses or conditions set forth in 37-12-321 or subsection (1) of this section, which complaint shall set forth a specification of the charges. When the complaint has been filed, the board may make an investigation as provided by this section or may proceed to hearing. The department shall mail a copy of the complaint to the person charged, together with notice of hearing as provided in subsection (2) of this section.

(4) After the hearing, the board shall adopt a resolution finding that the offenses charged have or have not been committed or that the conditions charged do or do not exist. If the finding is in the negative, the board shall dismiss the charges. If the finding is in the affirmative, the board shall:

(a) revoke the license;

(b) suspend the licensee's right to practice for a period not to exceed 1 year;

(c) suspend its judgment of revocation on terms and conditions determined by the board;

(d) place the licensee on probation; or

(e) take any other disciplinary action which the board in its discretion considers proper.

(5) In cases of revocation, suspension, or probation, the department shall record the facts of the case and all actions of the board in relation thereto.

(6) On the expiration of a term of suspension, the licensee shall be reinstated by the board if he furnishes evidence, satisfactory to the board, that he is then of good moral character and conduct or restored to good health and that he has not practiced chiropractic during the term of suspension. If the evidence fails to establish such facts to the satisfaction of the board, the board shall proceed to hearing on revocation with notice as provided in subsection (2) of this section.

History: En. 66-510.2 by Sec. 3, Ch. 516, L. 1977; R.C.M. 1947, 66-510.2.

Cross-References

Oath defined, 1-1-201.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Affidavits, Title 26, ch. 1, part 10.

Duty of Department to investigate unethical practices, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-12-323. Reconsideration of board action — fee for restoration of license. (1) At any time after refusal, suspension, or revocation of license or placement on probation or any other disciplinary action, the board may, on its own motion or on application, reconsider its prior action and reverse, rescind, or modify such action.

(2) A person whose license has been revoked and later restored shall pay a fee prescribed by the board for the restoration.

History: En. 66-510.3 by Sec. 4, Ch. 516, L. 1977; R.C.M. 1947, 66-510.3; amd. Sec. 31, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "shall pay a fee prescribed by the board" for "shall pay a fee of $50" in (2).

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-12-324. Penalty for violation. Any person who shall practice or attempt to practice chiropractic or any person who shall buy, sell, or fraudulently obtain any diploma or license to practice chiropractic, whether recorded or not, or who shall use the title "chiropractor", "D.C.", "Ph.C.", or any word title to influence belief that he is engaged in the practice of chiropractic without first complying with the provisions of this chapter or any person who shall violate any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $100 or more than $700 or by imprisonment in a county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment. Prosecutions for the violation of this chapter shall be instituted in the district courts.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3153, R.C.M. 1921; re-en. Sec. 3153, R.C.M. 1935; amd. Sec. 1, Ch. 74, L. 1943; R.C.M. 1947, 66-516.

CHAPTER 13

ACUPUNCTURE PRACTICE ACT

Part 1 — General

Section
37-13-101. Citation of chapter.
37-13-102. Legislative finding and purpose.
37-13-103. Definitions.
37-13-104. Partial exemptions.

Part 2 — Board of Medical Examiners

37-13-201. Powers and duties.

Part 3 — Licensing

37-13-301. License required for practice.
37-13-302. Application for examination — fee — qualifications.
37-13-303. Examination — scope — retention and inspection of examination papers — reexamination.
37-13-304. Issuance of certificate of license — license fee.
37-13-305. Admission of licensees from other states.
37-13-306. Annual renewal — fee — military exemption.
37-13-307. Deposit of moneys received.
37-13-308 through 37-13-310 reserved.
37-13-311. Denial, suspension, or revocation of license — grounds.
37-13-312. Denial, suspension, or revocation of license — procedure.
37-13-313. Reinstatement after period of suspension.
37-13-314. Application of administrative procedures.
37-13-315. Enjoining unlawful practice.
37-13-316. Penalty.

Part 1

General

37-13-101. Citation of chapter. This chapter shall be known and may be cited as the "Acupuncture Practice Act of 1974".

History: En. 66-3401 by Sec. 1, Ch. 317, L. 1974; R.C.M. 1947, 66-3401.

37-13-102. Legislative finding and purpose. The legislature finds and declares that the practice of acupuncture in Montana affects the public health, safety, and welfare and should therefore be subject to regulation and control in the public interest in order to protect the public from the unauthorized and unqualified practice of acupuncture and from unprofessional conduct by persons licensed to practice acupuncture.

History: En. 66-3402 by Sec. 2, Ch. 317, L. 1974; R.C.M. 1947, 66-3402.

37-13-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the Montana state board of medical examiners.

(2) "Acupuncture" means the treatment of the human body by means of mechanical, thermal, or electrical stimulation effected by the insertion of solid needles.

(3) "Acupuncturist" means a natural person licensed by the board of medical examiners to practice acupuncture.

(4) "School of acupuncture" means a school where acupuncture is taught that has been recognized and designated by the board of medical examiners.

History: En. 66-3403 by Sec. 3, Ch. 317, L. 1974; R.C.M. 1947, 66-3403.

37-13-104. Partial exemptions. Nothing in this chapter shall be construed to require doctors of medicine, osteopathy, chiropractic, dentistry, and podiatry who are licensed in Montana to take further examinations in anatomy, physiology, chemistry, dermatology, diagnosis, bacteriology, materia medica, or other subjects which are or may be required for licensure in their respective professions; but no doctor of medicine, osteopathy, chiropractic, dentistry, or podiatry shall practice acupuncture in this state unless and until he has completed a course and passed an examination in acupuncture as required by this chapter.

History: En. 66-3415 by Sec. 15, Ch. 317, L. 1974; R.C.M. 1947, 66-3415.

Part 2

Board of Medical Examiners

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1841.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-13-201. Powers and duties. In addition to all other powers and duties conferred and imposed upon the board by this chapter, the board shall have and exercise the following powers and duties:

(1) to promulgate, under the applicable provisions of the Montana Administrative Procedure Act, rules which it determines to be necessary to carry out the provisions of this chapter;

(2) to adopt a schedule of minimum educational requirements, not inconsistent with the provisions of this chapter;

(3) to prescribe forms for application for examination and license;

(4) to prepare and supervise examination of applicants for license to practice acupuncture;

(5) to obtain the services of professional examination agencies in lieu of its own preparation of the examinations;

(6) to issue, revoke, and suspend licenses as hereinafter provided;

(7) to hold hearings, issue subpoenas, administer oaths, and take testimony and proofs concerning all matters within its jurisdiction;

(8) to issue commissions to take depositions of witnesses who are sick or absent from the state; and

(9) to adopt a seal, which shall be affixed to all licenses issued by the board and other official papers.

History: En. 66-3405 by Sec. 5, Ch. 317, L. 1974; R.C.M. 1947, 66-3405.

Cross-References

Oath defined, 1-1-201.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Power of agencies to issue subpoenas, 2-4-104.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Affidavits, Title 26, ch. 1, part 10.

Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

Duties of boards, 37-1-131.

Perjury, 45-7-201.

False swearing, 45-7-202.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-13-301. License required for practice. No person may engage in the practice of acupuncture in this state unless he is licensed under the provisions of this chapter.

History: En. 66-3404, by Sec. 4, Ch. 317, L. 1974; R.C.M. 1947, 66-3404.

37-13-302. Application for examination — fee — qualifications. (1) Each person desiring to practice acupuncture in this state shall make application for examination with the secretary of the board, upon the forms and in the manner as prescribed by the board, at least 30 days before the date set by the board for the commencement of the examination. An examination fee prescribed by the board shall accompany the application.

(2) A person making application shall furnish the board evidence that he is:

(a) at least 18 years of age;

(b) of good moral character, as determined by the board; and

(c) a graduate of an approved school of acupuncture or has completed a course in acupuncture approved by the board.

History: En. 66-3406 by Sec. 6, Ch. 317, L. 1974; R.C.M. 1947, 66-3406; amd. Sec. 4, Ch. 341, L. 1981; amd. Sec. 32, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 341 deleted former subsection (2)(b) requiring U.S. citizenship.

Chapter 345 substituted "An examination fee prescribed by the board" for "An examination fee of $50" in the last sentence of (1).

Cross-References

Standardized forms, 37-1-104.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

37-13-303. Examination — scope — retention and inspection of examination papers — reexamination. (1) Any applicant meeting the requirements of this chapter shall be admitted to an assembled examination to be conducted by the board. An examination shall be held at least twice a year. The examination shall be practical in character and sufficiently thorough to test the fitness of the applicant to practice acupuncture. The examination shall be in writing, insofar as the board shall deem practicable, and shall cover such subjects as prescribed in the curriculum and taught in the schools which offer courses leading to the degree of doctor of acupuncture, master of acupuncture, master acupuncturist, or their equivalent. Demonstration of the applicant's skill in the practice of acupuncture may also be required.

(2) Examination papers of any applicant shall be retained 2 years by the secretary of the board and may then be destroyed. While retained the examination papers shall be open to inspection only by board members, the applicant, or by some person appointed by the applicant to examine them or by a court of competent jurisdiction in a proceeding where the question of the contents of the papers is properly involved.

(3) Any applicant failing to pass his first examination before the board may, at any subsequent meeting of the board held for the purpose of examining candidates, if otherwise qualified, take subsequent examinations upon payment of the fee prescribed by the board for each examination.

History: En. 66-3407 by Sec. 7, Ch. 317, L. 1974; R.C.M. 1947, 66-3407; amd. Sec. 33, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "upon payment of the fee prescribed by the board" for "upon payment of the fee of $25" near the end of (3).

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

Duties of Department, 37-1-101.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-13-304. Issuance of certificate of license — license fee. All applicants successfully passing the examination required by this chapter shall be registered as licensed acupuncturists in the board register and, upon the payment of a license fee prescribed by the board, shall be issued a certificate of license in such form as prescribed by the board. The certificate shall bear the official seal of the board.

History: En. 66-3408 by Sec. 8, Ch. 317, L. 1974; R.C.M. 1947, 66-3408; amd. Sec. 34, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "upon the payment of a license fee prescribed by the board" for "upon the payment of a $20 license fee" in the middle of the section.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-13-305. Admission of licensees from other states. A license without examination may be issued by the board to any acupuncturist licensed or certified in another state where the licensing or certification requirements are substantially equivalent to the requirements of this chapter, upon payment of the license fee prescribed by the board as herein provided.

History: En. 66-3409 by Sec. 9, Ch. 317, L. 1974; R.C.M. 1947, 66-3409; amd. Sec. 35, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "upon payment of the license fee prescribed by the board" for "upon payment of the license fee of $20" near the end of the section.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-13-306. Annual renewal — fee — military exemption. (1) The license to practice acupuncture shall expire on December 31 of each calendar year and shall be renewed without examination upon request of the licensee. The request for renewal shall be on forms prescribed by the board and accompanied by a renewal fee prescribed by the board. The request and fee shall be in the hands of the secretary of the board not later than the expiration date of the license.

(2) On or before December 1 of each calendar year, the secretary of the board shall notify each licensee by letter, addressed to his last place of residence as the same appears on the records of the board, that his license will expire on December 31 following the date of notice unless application for renewal, accompanied by the annual renewal fee, is received by the board on or prior to that date.

(3) Immediately following December 31 of each calendar year, the secretary shall notify all licensees from whom requests for renewal, accompanied by the renewal fee, have not been received that their licenses have expired and that they will be cancelled and revoked upon the records of the board unless a request for renewal and reinstatement, accompanied by the renewal fee and an additional fee prescribed by the board, shall be in the hands of the secretary prior to February 1 following the expiration date.

(4) Immediately following February 1 of each calendar year, the secretary of the board shall cancel and revoke upon its records all licenses which have not been renewed or reinstated as provided by this chapter and shall notify the licensees whose licenses are so revoked of such action.

(5) Any licensee who allows his license to lapse by failing to renew or reinstate the same as herein provided may subsequently reinstate the same upon good cause shown to the satisfaction of the board and upon payment of all annual renewal fees then accrued plus an additional fee prescribed by the board for each year following the cancelling of the license.

(6) Any person actively engaged in the military service of the United States and licensed to practice acupuncture as herein provided shall not be required to pay the annual renewal fee or make application for renewal until December 31 of the calendar year in which he returns from military service to civilian or inactive status.

History: En. 66-3410 by Sec. 10, Ch. 317, L. 1974; R.C.M. 1947, 66-3410; amd. Sec. 36, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "a renewal fee prescribed by the board" for "a renewal fee of $20" at the end of the second sentence of (1); substituted "an additional fee prescribed by the board" for "an additional fee of $5" near the end of (3); and substituted "an additional fee prescribed by the board" for "an additional fee of $5" near the end of (5).

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-13-307. Deposit of moneys received. All moneys received under this chapter shall be deposited with the state treasurer and credited to an account to be designated by him. No money shall be paid out of the fund except upon vouchers drawn against the fund, signed and certified to by the secretary of the board. All funds so credited shall be available to the board for the payment of expenses incurred by it in the performance of its duties under this chapter.

History: En. 66-3413 by Sec. 13, Ch. 317, L. 1974; R.C.M. 1947, 66-3413.

37-13-308 through 37-13-310 reserved.

37-13-311. Denial, suspension, or revocation of license — grounds. The board may refuse to issue or may suspend or revoke a license issued pursuant to this chapter for any one or any combination of the following causes:

(1) conviction of a felony or conviction of a violation of any state or federal law regulating the possession, distribution, or use of any controlled substance as shown by a certified copy of record of the court, subject to chapter 1, part 2 of this title;

(2) being adjudicated incompetent or seriously mentally ill;

(3) sustaining a physical or mental disability which renders further practice dangerous;

(4) habitual drunkenness or habitual addiction to the use of a controlled substance;

(5) gross malpractice;

(6) engaging in any dishonorable, unethical, or unprofessional conduct which may deceive, defraud, or harm the public or which is unbecoming a person licensed to practice under this chapter;

(7) obtaining or any attempt to obtain a license or practice in the profession for money or any other thing of value by fraudulent misrepresentations;

(8) advertising by means of knowingly false or deceptive statement;

(9) advertising, practicing, or attempting to practice under a name other than one's own;

(10) using any false, fraudulent, or forged statement or document or engaging in any fraudulent, deceitful, dishonest, or immoral practice in connection with the licensing requirements of this chapter; or

(11) violating or attempting to violate or assisting or abetting the violation of or conspiring to violate any provision of this chapter.

History: En. 66-3411 by Sec. 11, Ch. 317, L. 1974; amd. Sec. 30, Ch. 101, L. 1977; R.C.M. 1947, 66-3411(1).

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unethical conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-13-312. Denial, suspension, or revocation of license — procedure. (1) Any person, including any member of the board, may file a sworn complaint with the secretary of the board against any person having a license to practice acupuncture in this state charging him with the commission of any of the offenses set forth in 37-13-311, which complaint shall set forth a specification of the charges. When the complaint is filed, the secretary shall mail a copy to the person so accused at his last address of record with the board, together with a written notice of the time and place of a hearing thereon, advising him that he may be present in person and by counsel if he so desires to offer evidence and be heard in his defense. The time fixed for hearing may not be less than 30 days from the date of mailing the notice.

(2) At the time and place fixed for a hearing before the board as provided in subsection (1) of this section or at any time and place to which the matter may be continued, the board shall receive evidence upon the subject under consideration and shall accord the person against whom charges are preferred a full and fair opportunity to be heard in his defense and shall, after consideration, adopt a resolution finding him guilty or not guilty of the matters charged. If the board finds that the conditions referred to in 37-13-311 do not exist with reference to the person or if he is found not guilty, the board shall dismiss the charges or complaint, but if the board finds that the conditions referred to in 37-13-311 do exist and the person is found guilty, the board shall:

(a) revoke his license;

(b) suspend his right to practice for a period not exceeding 1 year;

(c) suspend its judgment of revocation upon the terms and conditions to be determined by the board;

(d) place him on probation; or

(e) take such other action in relation to disciplining him as the board in its discretion considers proper.

(3) The secretary of the board in all cases of revocation, suspension, or probation shall enter in its records the facts of the action and of any subsequent action of the board with respect thereto.

History: En. 66-3411 by Sec. 11, Ch. 317, L. 1974; amd. Sec. 30, Ch. 101, L. 1977; R.C.M. 1947, 66-3411(part).

Cross-References

Oath defined, 1-1-201.

Oaths, Title 1, ch. 6.

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunctions, 37-1-136.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-13-313. Reinstatement after period of suspension. Upon the expiration of the term of suspension, the licensee shall be reinstated by the board provided the licensee furnishes the board with evidence that he is then of good moral character and conduct and restored to good health and that he has not practiced acupuncture in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the licensee is then of good moral character and conduct or restored to good health or if the evidence shows he has practiced acupuncture in this state during the term of suspension, the board shall revoke the license at a hearing, the notice and procedure of which shall be as herein provided, which revocation is final and absolute.

History: En. 66-3411 by Sec. 11, Ch. 317, L. 1974; amd. Sec. 30, Ch. 101, L. 1977; R.C.M. 1947, 66-3411(5).

Cross-References

Judicial review of contested cases, Title 2, ch. 4, part 7.

37-13-314. Application of administrative procedures. (1) The contested case procedures of the Montana Administrative Procedure Act apply to the notice and hearing required by 37-13-312 and 37-13-313, except that neither common law nor statutory rules of evidence need apply, but the board may make rules designed to exclude repetitive, redundant, or irrelevant testimony.

(2) Any person aggrieved by the final decision of the board may obtain judicial review of that decision. The judicial review procedure shall be the same as that for contested cases under the Montana Administrative Procedure Act.

History: (1)En. 66-3411 by Sec. 11, Ch. 317, L. 1974; amd. Sec. 30, Ch. 101, L. 1977; Sec. 66-3411, R.C.M. 1947; (2)En. 66-3412 by Sec. 12, Ch. 317, L. 1974; Sec. 66-3412, R.C.M. 1947; R.C.M. 1947, 66-3411(part), 66-3412.

Cross-References

Contested case procedures, Title 2, ch. 4, part 6.

37-13-315. Enjoining unlawful practice. The practice of acupuncture in any way other than as defined in this chapter may be enjoined by the district court on petition by the board. In any such proceeding, it shall not be necessary to show that any person is individually injured by the actions complained of. If the respondent is found to have so practiced, the court shall enjoin him from so practicing unless and until he has been duly licensed. Procedure in such cases shall be the same as in any other injunction suit. The remedy by injunction is in addition to criminal prosecution and punishment.

History: En. 66-3414 by Sec. 14, Ch. 317, L. 1974; R.C.M. 1947, 66-3414.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunctions, 37-1-136.

37-13-316. Penalty. Any person who violates any of the provisions of this chapter or the rules of the state board of acupuncture shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding 6 months or by a fine not exceeding $500, or both.

History: En. 66-3416 by Sec. 16, Ch. 317, L. 1974; R.C.M. 1947, 66-3416.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

CHAPTER 14

RADIOLOGIC TECHNOLOGISTS

Part 1 — General

Section
37-14-101. Purpose.
37-14-102. Definitions.

Part 2 — Board of Radiologic Technologists

37-14-201. Compensation of board members — meetings — quorum.

37-14-202. Rulemaking power.

Part 3 — Licensing

37-14-301. Limitation of license authority — exemptions.
37-14-302. Qualifications.
37-14-303. Examination — application fee.
37-14-304. Licensure by endorsement.
37-14-305. Issuance of license or permit — fee.
37-14-306. Permits.
37-14-307. Duty to carry, display license or permit.
37-14-308. Issuance of other documents.
37-14-309. Replacement documents.
37-14-310. Annual renewal — fee — reissuance of license.
37-14-311. Deposit of fees.
37-14-312. Repealed.
37-14-313 through 37-14-320 reserved.
37-14-321. Revocation or suspension of license or permit.
37-14-322. Inspections.
37-14-323. Penalty for violation.

Chapter Cross-References

Nuclear regulation, Title 75, ch. 3.

Part 1

General

37-14-101. Purpose. The legislature declares that the practice of radiologic technology affects the public health, safety, and welfare and that it is therefore necessary to regulate and control such practice in the public interest. The purpose of this chapter is to protect the public from the unprofessional, improper, unauthorized, or unqualified practice of radiologic technology.

History: En. 66-3701.1 by Sec. 4, Ch. 310, L. 1977; R.C.M. 1947, 66-3701.1.

37-14-102. Definitions. In this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Board" means the board of radiologic technologists provided for in 2-15-1848.

(2) "Department" means the department of commerce.

(3) "License" means an authorization issued by the department to perform x-ray procedures on persons.

(4) "Licensed practitioner" means a person licensed or otherwise authorized by law to practice medicine, dentistry, denturitry, dental hygiene, podiatry, chiropody, osteopathy, or chiropractic.

(5) "Limited permit technician" means a person who does not qualify for the issuance of a license under the provisions of this chapter but who has demonstrated, to the satisfaction of the board, the capability of performing specified high-quality x-ray procedures without endangering public health and safety.

(6) "Performance of x-ray procedures" means the involvement or completion of any portion of an x-ray procedure that may have an effect on the

patient's accumulated x-ray radiation exposure, including positioning of the patient, technique selection, selection of ancillary equipment, initiation of exposure, and darkroom procedures.

(7) "Permit" means an authorization which may be granted by the board to perform x-ray procedures on persons when the applicant's qualifications do not meet standards required for the issuance of a license.

(8) "Radiologic technologist" means a person other than a licensed practitioner who has qualified under the provisions of this chapter for the issuance of a license to perform diagnostic x-ray procedures on persons and who performs the following functions in connection with the diagnostic procedure:

(a) operates x-ray equipment to reveal the internal condition of patients for the diagnosis of fractures, diseases, and other injuries;

(b) prepares and positions patients for x-ray procedures;

(c) selects the proper radiographic technique for visualization of specific internal structures of the human body;

(d) selects the proper ancillary equipment to be utilized in the x-ray procedure to enhance the visualization of the desired structure;

(e) prepares film processing solutions and develops or processes the exposed x-ray film; and

(f) inspects, maintains, and performs minor repairs to x-ray equipment.

History: En. 66-3701 by Sec. 1, Ch. 336, L. 1975; amd. Sec. 1, Ch. 310, L. 1977; R.C.M. 1947, 66-3701; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 25, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 2, Ch. 166, L. 1985.

Compiler's Comments

1985 Amendment: In (3) substituted present language for ""License" means an authorization to apply x-ray radiation to persons issued by the department of commerce"; inserted (5) and (6); in (7) before "x-ray", substituted "perform" for "apply" and after "x-ray" substituted "procedures on" for "radiation to"; in (8) after "who", substituted "has qualified under the provisions of this chapter for the issuance of a license to perform" for "applies", after "x-ray", substituted "procedures on" for "radiation to", after "persons", inserted remainder of (8) to colon; and inserted (8)(a) through (8)(f).

1984 Initiative Amendment: In (4) after "dentistry", inserted "denturitry".

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2) and (3); changed internal reference to the board.

Part 2

Board of Radiologic Technologists

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1848.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-14-201. Compensation of board members — meetings — quorum. (1) Board members shall receive compensation and travel expenses as provided for in 37-1-133.

(2) The board shall meet at least twice a year and elect a chairman at the first meeting of each calendar year.

(3) Four members of the board constitute a quorum for the purpose of transacting business.

History: En. 66-3703 by Sec. 4, Ch. 336, L. 1975; amd. Sec. 13, Ch. 453, L. 1977; R.C.M. 1947, 66-3703; amd. Sec. 18, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: In (1), deleted the first sentence allowing the board to determine compensation; substituted "receive compensation and" for "be reimbursed for their"; and substituted "37-1-103" for "2-18-501 through 2-18-503, as amended, incurred while on official business of the board".

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Duty of Department to provide facilities, 37-1-101.

Duties of boards, 37-1-131.

Disrupting meeting as disorderly conduct, 45-8-101.

37-14-202. Rulemaking power. The board may promulgate rules necessary to carry out the provisions of this chapter and adjudicate contested cases under it.

History: En. 66-3704 by Sec. 5, Ch. 336, L. 1975; R.C.M. 1947, 66-3704.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-14-301. Limitation of license authority — exemptions. (1) No person may perform x-ray procedures on a person unless licensed or granted a limited permit under this chapter, with the following provisos:

(a) Licensure is not required for:

(i) a student enrolled in and attending a school or college of medicine, osteopathy, chiropody, podiatry, dentistry, dental hygiene, chiropractic, or radiologic technology who applies x-ray radiation to persons under the specific direction of a person licensed to prescribe such examinations or treatment;

(ii) a person administering x-ray examinations related to the practice of dentistry or denturitry, provided such person is certified by the board of dentistry as having passed an examination testing his proficiency to administer x-ray examinations; or

(iii) a person who performs only darkroom procedures and is under the supervision of a licensed radiologic technologist or radiologist or is able to show evidence of completion of formal training in darkroom procedures as established by rule.

(b) Nothing in this chapter shall be construed to limit or affect in any respect the practice of their respective professions by duly licensed practitioners.

(2) A person licensed as a radiologic technologist may perform x-ray procedures on persons for medical, diagnostic, or therapeutic purposes under the specific direction of a person licensed to prescribe such procedures.

(3) A radiologic technologist licensed under this chapter may inject contrast media and radioactive isotopes (radio-nuclide material) intravenously upon request of a duly licensed practitioner. In the case of contrast media, the licensed practitioner requesting the procedure or the radiologist must be immediately available within the x-ray department. Such injections must be

for diagnostic studies only and not for therapeutic purposes. The permitted injections include peripheral intravenous injections but specifically exclude intra-arterial or intracatheter injections. An uncertified radiologic technologist, a limited permit technician under 37-14-306, or an individual who is not licensed or authorized under another licensing act may not perform any of the activities listed in this subsection.

History: En. 66-3702 by Sec. 2, Ch. 336, L. 1975; R.C.M. 1947, 66-3702; amd. Sec. 1, Ch. 150, L. 1981; amd. Sec. 26, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 3, Ch. 166, L. 1985; amd. Sec. 17, Ch. 548, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 166 in (1) and (2) before "x-ray" substituted "perform" for "apply" and after "x-ray" substituted "procedures on" for "radiation to"; in (1) following "licensed", inserted "or granted a limited permit"; inserted (1)(a)(iii); at end of (2) substituted "procedures" for "examinations or treatments"; in last sentence of (3), after "technologist", substituted "limited permit technician" for "permitholder" and after "37-14-306", inserted "or an individual who is not licensed or authorized under another licensing act".

Chapter 548 in (1)(a)(ii), after "denturitry", inserted proviso constituting remainder of subsection.

1984 Initiative Amendment: In (1)(a)(ii) after "practice of dentistry", inserted "or denturitry".

1981 Amendment: Substituted "specific direction" for "direct supervision" before "of a person licensed" in (1)(a)(i); added subsection (3).

37-14-302. Qualifications. (1) Each applicant for licensure as a radiologic technologist shall have satisfactorily completed a 24-month course of study in radiologic technology approved by the board.

(2) Each applicant for licensure as a radiologic technologist shall:

(a) be of good moral character;

(b) be at least 18 years of age; and

(c) not be addicted to intemperate use of alcohol or narcotic drugs.

History: En. 66-3705 by Sec. 6, Ch. 336, L. 1975; amd. Sec. 2, Ch. 310, L. 1977; R.C.M. 1947, 66-3705; amd. Sec. 2, Ch. 296, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "other than those qualifying under 37-14-312" after "radiologic technologist" in (1); deleted "including those qualifying under 37-14-312" after "radiologic technologist" in (2).

Cross-References

Licensing investigation and review — record access, 37-1-135.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

37-14-303. Examination — application fee. (1) Examinations for licensure as a radiologic technologist shall include a written portion and may also include practical and oral portions as established by the board.

(2) The board shall provide applicants for licensure the opportunity for examinations at intervals not to exceed 6 months.

(3) A nonrefundable examination fee, established by the board, shall be submitted prior to examination for licensure. An applicant failing the examination shall be charged a nonrefundable application fee for any subsequent examination. An applicant failing any subsequent examination is not eligible for reexamination until 12 months following the last failed examination.

History: En. 66-3706 by Sec. 7, Ch. 336, L. 1975; amd. Sec. 3, Ch. 310, L. 1977; R.C.M. 1947, 66-3706(1) thru (3); amd. Sec. 37, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "but not to exceed $50" after "fee, established by the board" in the first sentence of (3).

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-14-304. Licensure by endorsement. The board may accept in lieu of its own examination a certificate of the American registry of radiologic technologists (ARRT) or a certificate, registration, or license issued by another state whose qualifications are at least equal to those set forth in this chapter.

History: En. 66-3706 by Sec. 7, Ch. 336, L. 1975; amd. Sec. 3, Ch. 310, L. 1977; R.C.M. 1947, 66-3706(4).

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-14-305. Issuance of license or permit — fee. The board shall issue a license or permit to each applicant who has submitted a nonrefundable licensing fee set by the board and has met the requirements of this chapter.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(part); amd. Sec. 38, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Deleted ", not to exceed $50," after "fee set by the board" near the end of the section.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-14-306. Permits. (1) The board may issue a permit to an applicant not qualifying for the issuance of a license under the provisions of this chapter but who has demonstrated, to the satisfaction of the board, the capability of performing high-quality x-ray procedures without endangering public health and safety. An applicant must be required to demonstrate this capability by completion of formal classroom training that meets the standards established by rule and by means of examination. Permits issued under provisions of this section and 37-14-305 shall specify x-ray procedures, defined and established by rule, that may be performed by the holder. Permits shall be valid for a period not to exceed 12 months but may be renewed under the provisions established by rule.

(2) Examinations for the issuance of a permit must include a written portion and may also include practical and oral portions as established by the board. The board shall provide applicants for permits the opportunity for examination at intervals not to exceed 6 months. A nonrefundable examination fee, established by the board, must be submitted prior to examination for a permit. An applicant failing the examination must be charged a nonrefundable examination fee for any subsequent examination. An applicant failing any subsequent examination shall meet any additional eligibility requirements established by rule for reexamination.

(3) Applicants meeting minimum requirements for licensure shall be issued a temporary permit to work as a radiologic technologist. This temporary permit shall expire 15 days after the date of first opportunity for examination.

(4) The board shall issue temporary permits to unlicensed persons to perform x-ray procedures when adequate evidence is provided the board that such a permit is necessary because of a regional hardship or emergency condition and that such person is capable of performing x-ray procedures without endangering public health and safety. Temporary permits may not exceed 12 months in duration but may be renewed by reestablishing, to the board's

satisfaction, evidence of continued regional hardship or emergency conditions. The required adequate evidence of regional hardship, emergency conditions, and capability to perform x-ray procedures without endangering public health and safety must be established by rule.

(5) Each applicant for a permit must:

(a) be of good moral character;

(b) be at least 18 years of age; and

(c) not be addicted to intemperate use of alcohol or narcotic drugs.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(2) thru (4); amd. Sec. 4, Ch. 166, L. 1985.

Compiler's Comments

1985 Amendment: Throughout section, after "x-ray", substituted "procedures" for "examinations"; in (1), in first sentence, after "satisfaction of", deleted "a physician specializing in radiology approved by", inserted second sentence, in third sentence, after "x-ray procedures", inserted "defined and established by rule", and in last sentence, substituted "established by rule" for "for original issuance"; inserted (2); in (4) in first sentence, before "persons", substituted "unlicensed" for "uncertified" and inserted last sentence; and inserted (5).

37-14-307. Duty to carry, display license or permit. Each radiologic technologist or limited permit technician shall carry or display his license or permit while at work. The license or permit shall be displayed on request.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(5); amd. Sec. 5, Ch. 166, L. 1985.

Compiler's Comments

1985 Amendment: After "technologist" inserted "or limited permit technician"; and after "carry" inserted "or display".

37-14-308. Issuance of other documents. The board may issue to licensees or permittees such other cards, certificates, or documents as it considers necessary or convenient to the proper administration of this chapter.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(6).

37-14-309. Replacement documents. The board may charge a reasonable fee for the replacement or duplication of a certificate, license, permit, or other document issued pursuant to this chapter.

History: En. 66-3709.1 by Sec. 9, Ch. 310, L. 1977; R.C.M. 1947, 66-3709.1.

37-14-310. Annual renewal — fee — reissuance of license. (1) Licenses expire annually on the date established by rule of the department.

(2) A license shall be renewed by the board upon payment of a license fee set by the board and submission of a renewal application containing such information as the board considers necessary to show that the applicant for renewal is a radiologic technologist in good standing.

(3) A radiologic technologist who has been licensed in Montana and whose license has not been revoked or suspended and who has temporarily ceased activities as a radiologic technologist for not more than 5 years may apply for reissuance of a license upon complying with the provisions of this section, including payment of an application fee.

History: En. 66-3709 by Sec. 10, Ch. 336, L. 1975; amd. Sec. 8, Ch. 310, L. 1977; R.C.M. 1947, 66-3709; amd. Sec. 5, Ch. 390, L. 1983; amd. Sec. 6, Ch. 166, L. 1985.

Compiler's Comments

1985 Amendment: In (1) after "expire", inserted "annually" and at end after "department", deleted "in the first even-numbered year following the year of their issuance and on every even-numbered year thereafter".

Applicability: Section 8, Ch. 166, L. 1985, provided: "Two -year licenses issued by the department under 37-14-310 [prior to 1985 amendment] are valid until the expiration date established by the department. Upon expiration, renewal must be done annually as provided in 37-14-310, as amended by this act."

1983 Amendment: In (1), after "expire on" substituted "the date established by rule of the department in" for "December 31 of".

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-14-311. Deposit of fees. Fees collected by the department shall be deposited in the state special revenue fund for the use of the board in administering this chapter.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(part); amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

37-14-312. Repealed. Sec. 3, Ch. 296, L. 1981.

History: En. 66-3708.1 by Sec. 7, Ch. 310, L. 1977; amd. Sec. 1, Ch. 573, L. 1977; R.C.M. 1947, 66-3708.1(1)(b).

37-14-313 through 37-14-320 reserved.

37-14-321. Revocation or suspension of license or permit. A license or permit may be suspended for a fixed period or may be revoked, or such technologist or technician may be censured, reprimanded, or otherwise disciplined as determined by the board if, after a hearing before the board, it is determined that the radiologic technologist or limited permit technician:

(1) is guilty of fraud or deceit in activities as a radiologic technologist or limited permit technician or has been guilty of any fraud or deceit in procuring the license or permit;

(2) has been convicted in a court of competent jurisdiction of a crime involving moral turpitude;

(3) is an habitual drunkard or is addicted to the use of narcotics or other drugs having a similar effect or is not mentally competent;

(4) is guilty of unethical conduct, as defined by rules promulgated by the board, or has been guilty of incompetence or negligence in his activities as a radiologic technologist or limited permit technician;

(5) has continued to perform as a radiologic technologist or limited permit technician without obtaining a license or permit or renewal as required by this chapter.

History: En. 66-3710 by Sec. 11, Ch. 336, L. 1975; R.C.M. 1947, 66-3710; amd. Sec. 7, Ch. 166, L. 1985.

Compiler's Comments

1985 Amendment: In lead-in after "such technologist", inserted "or technician"; in four places in section, after "radiologic technologist", inserted "or limited permit technician"; and in (5) before "renewal", substituted "permit or" for "license".

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unethical conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-14-322. Inspections. Inspections for compliance with the provisions of this chapter may be performed by:

(1) the board of radiologic technologists;

(2) the department of commerce;

(3) the department of health and environmental sciences.

History: En. 66-3711 by Sec. 12, Ch. 336, L. 1975; R.C.M. 1947, 66-3711; amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in subsection (2).

37-14-323. Penalty for violation. A person or the employer of a person who violates any provisions of this chapter or rules adopted under this chapter is guilty of an offense and shall be fined not to exceed $500. Each day of violation constitutes a separate offense.

History: En. 66-3712 by Sec. 13, Ch. 336, L. 1975; R.C.M. 1947, 66-3712.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Criminal responsibility of corporations, 45-2-311.

CHAPTER 15

SPEECH PATHOLOGISTS AND AUDIOLOGISTS

Part 1 — General

Section

37-15-101. Purpose.
37-15-102. Definitions.
37-15-103. Exemptions.

Part 2 — Board of Speech Pathologists and Audiologists

37-15-201. Meetings.
37-15-202. Powers and duties of board and department.
37-15-203. Compensation and expenses.

Part 3 — Licensing

37-15-301. License required.
37-15-302. Application forms.
37-15-303. Qualifications.
37-15-304. Examination.
37-15-305. Practice pending disposition of application — waiver — provisional license.
37-15-306. Issuance of license.
37-15-307. Application and examination fee — license fee — registration fee.
37-15-308. Renewal.
37-15-309. Continuing education required for renewal.
37-15-310. Deposit of moneys received.
37-15-311. Municipal tax prohibited.

37-15-312. Department to publish list of licensees and registrants.
37-15-313. Registration of aides.
37-15-314 through 37-15-320 reserved.
37-15-321. Denial, suspension, or revocation of license — reinstatement.
37-15-322. Penalty.
37-15-323. Injunction of unlawful practice.

Chapter Cross-References

Contracts by school districts for audiological services, 20-7-403(13).

Speech pathologist, audiologist-client privilege, 26-1-806.

Audiologist exempt from licensure as hearing aid dispenser, 37-16-405.

Part 1
General

37-15-101. Purpose. The legislature of the state of Montana declares it to be a policy of this state that in order to safeguard the public health, safety, and welfare and to protect the public from being misled by incompetent, unscrupulous, and unauthorized persons and to protect the public from unprofessional conduct by qualified speech pathologists and audiologists and to help assure the availability of the highest possible quality speech pathology and audiology services to the communicatively handicapped people of this state, it is necessary to provide regulatory authority over persons offering speech pathology or audiology services to the public.

History: En. 66-3901 by Sec. 1, Ch. 543, L. 1975; R.C.M. 1947, 66-3901.

37-15-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of speech pathologists and audiologists provided for in 2-15-1849.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Speech pathologist" means one who practices speech pathology and who presents himself to the public by any title or description of services incorporating the words "speech pathologist", "speech correctionist", "speech therapist", "speech clinician", "language pathologist", "language therapist", "language clinician", or any similar title or description of services.

(4) "Speech pathology aide" means any person meeting the minimum requirements established by the board of speech pathologists and audiologists who works directly under the supervision of a licensed speech pathologist.

(5) "Audiologist" means a person who practices audiology and who presents himself to the public by any title or description of services incorporating the words "audiologist", "hearing clinician", "hearing therapist", or any similar title or description of services.

(6) "Audiology aide" means any person meeting the minimum requirements established by the board of speech pathologists and audiologists who works directly under the supervision of a licensed audiologist.

(7) "Practice of speech pathology" means the application of principles, methods, and procedures for the measurement, testing, evaluation, prediction, counseling, or instruction related to the development and disorders of speech,

voice, or language for the purpose of evaluating, preventing, habilitating, rehabilitating, or modifying such disorders and conditions in individuals or groups of individuals.

(8) "Practice of audiology" means the application of principles, methods, and procedures of measurement, testing, appraisal, prediction, consultation, counseling, and instruction related to hearing and hearing impairment for the purpose of modifying communicative disorders involving speech, language, or auditory function, including auditory behavior related to hearing impairment.

(9) "Association" means the Montana speech and hearing association.

(10) "ASHA" means the American speech and hearing association.

(11) "Unethical conduct" means:

(a) the obtaining of any fee by fraud or misrepresentation;

(b) employing, directly or indirectly, any suspended or unlicensed person to perform any work covered by this chapter unless that person assumes the legal status of a supervised aide;

(c) using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is misleading, deceiving, improbable, or untruthful.

(12) "Provisionally licensed speech pathologist or audiologist" means those speech pathologists or audiologists currently practicing the profession in the state who do not meet the minimum requirements for licensure as defined in this chapter and who are eligible for provisional licensure conditioned on biennial evidence of satisfactory progress toward meeting the requirements for licensure as provided in this chapter. This provisional licensure, as defined in this chapter, may exist for no longer than 6 years from July 1, 1975, under any circumstance.

History: En. 66-3902 by Sec. 2, Ch. 543, L. 1975; R.C.M. 1947, 66-3902; amd. Sec. 11, Ch. 22, L. 1979; amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

37-15-103. Exemptions. (1) Nothing in this chapter shall prevent a person licensed in this state under any other law from engaging in the profession or business for which he is licensed.

(2) Nothing in this chapter shall restrict or prevent activities of a speech pathology or audiology nature or the use of the official title of the position for which they were employed on the part of a speech pathologist or audiologist employed by federal agencies.

(3) Those persons performing activities described in subsection (2) of this section who are not licensed under this chapter must do so solely within the confines of or under the jurisdiction of the organization in which they are employed and shall not offer speech pathology or audiology services to the public for compensation over and above the salary they receive for performance of their official duties with organizations by which they are employed. However, without obtaining a license under this chapter, such persons may consult or disseminate their research findings and scientific information to other accredited academic institutions or governmental agencies. They also may offer lectures to the public for a fee without being licensed under this chapter.

(4) Nothing in this chapter shall restrict activities and services of a student in speech pathology or audiology from pursuing a course of study in speech pathology or audiology at an accredited or approved college or university or an approved clinical training facility. However, these activities and services must constitute a part of his supervised course of study, and no fee shall accrue directly or indirectly to the student. These persons shall be designated by the title "speech pathology (or audiology) intern", "speech pathology (or audiology) trainee", or a title clearly indicating the training status appropriate to his level of training.

(5) Nothing in this chapter shall restrict a person from another state from offering speech pathology or audiology services in this state if such services are performed for no more than 5 days in any calendar year and if the services are performed in cooperation with a speech pathologist or audiologist licensed under this chapter. However, by securing a temporary license from the board subject to such limitations as the board may impose, a person not a resident of this state who is not licensed under this chapter but who is licensed under the law of another state which has established licensure requirements at least equivalent to those established by this chapter or who is the holder of the ASHA certificate of clinical competency in speech pathology or audiology or its equivalent may offer speech pathology or audiology services in this state for no more than 30 days in any calendar year if such services are performed in cooperation with a speech pathologist or audiologist licensed under this chapter.

(6) Nothing in this chapter shall restrict any person holding a class A certificate issued by the conference of executives of American schools of the deaf from performing the functions for which he qualifies.

(7) Nothing in this chapter shall restrict any person who holds a certificate of registration in this state as a hearing aid dealer from performing those functions for which he qualifies and which are described in Title 37, chapter 16.

History: En. 66-3904 by Sec. 4, Ch. 543, L. 1975; R.C.M. 1947, 66-3904.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Regulation of hearing aid dispensers, Title 37, ch. 16.

Part 2

Board of Speech Pathologists and Audiologists

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1849.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-15-201. Meetings. (1) The board shall meet at least once a year at a place, day, and hour determined by the board. The board shall also meet at other times and places as the bylaws of the board may provide or by call of the chairman or a majority of the members of the board. A quorum of the board shall consist of the majority of its members, but in no instance may a meeting of three board members who are exclusively speech pathologists or exclusively audiologists be considered a quorum.

(2) All meetings of the board for the consideration of and action on matters coming before the board are open to the public except:

(a) matters involving the management of internal affairs of the board may be considered and acted upon by the board in executive meetings under rules prescribed by the board;

(b) sessions to prepare, approve, grade, or administer examinations;

(c) upon request of a person who has failed the licensing examinations and who is appearing to appeal the failure.

History: En. 66-3905 by Sec. 6, Ch. 543, L. 1975; amd. Sec. 14, Ch. 453, L. 1977; amd. Sec. 5, Ch. 531, L. 1977; R.C.M. 1947, 66-3905(1), (4).

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Duty of Department to provide facilities, 37-1-101.

Disrupting meeting as disorderly conduct, 45-8-101.

37-15-202. Powers and duties of board and department. (1) The board shall:

(a) administer, coordinate, and enforce the provisions of this chapter;

(b) evaluate the qualifications of each applicant for a license as issued under this chapter and supervise the examination of such applicants;

(c) investigate persons engaging in practices which allegedly violate the provisions of this chapter;

(d) conduct hearings and keep records and minutes as the board considers necessary to an orderly dispatch of business;

(e) adopt rules, including but not limited to those governing ethical standards of practice under this chapter;

(f) make recommendations to the governor and other state officials regarding new and revised programs and legislation related to speech pathology or audiology which could be beneficial to the citizens of the state of Montana;

(g) cause the prosecution and enjoinder of all persons violating this chapter, by the complaints of its secretary filed with the county attorney in the county where the violation took place, and incur necessary expenses therefor;

(h) adopt a seal by which the board shall authenticate its proceedings.

(2) Copies of the proceedings, records, and acts of the board, signed by the chairman or secretary of the board and stamped with the seal, shall be prima facie evidence of the validity of such documents.

(3) The board may make rules which are reasonable or necessary for the proper performance of its duties and for the regulation of proceedings before it.

(4) The department may employ persons it considers necessary to carry out the provisions of this chapter.

(5) The department shall prepare a report to the governor as required by law.

History: En. 66-3905 by Sec. 6, Ch. 543, L. 1975; amd. Sec. 14, Ch. 453, L. 1977; amd. Sec. 5, Ch. 531, L. 1977; R.C.M. 1947, 66-3905(3), (5) thru (7).

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Public records, Title 2, ch. 6.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.
Duties of Department, 37-1-101.
Biennial report to Governor and Legislature, 37-1-106.
Duties of boards, 37-1-131.

37-15-203. Compensation and expenses. Each board member shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. 66-3905 by Sec. 6, Ch. 543, L. 1975; amd. Sec. 14, Ch. 453, L. 1977; amd. Sec. 5, Ch. 531, L. 1977; R.C.M. 1947, 66-3905(2); amd. Sec. 19, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Substituted language after "receive" for "travel expenses and mileage incidental to board meetings and business, as provided for in 2-18-501 through 2-18-503, as amended. Compensation may be paid each board member not otherwise compensated in the amount of $25 per day when attending board meetings".

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.
Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-15-301. License required. (1) A license shall be issued to qualified persons either in speech pathology or audiology. A person may be licensed in both areas if he meets the respective qualifications, and in such instances the license fee shall be as though for one license.

(2) No person may practice or represent himself as a speech pathologist or audiologist in this state unless he is licensed in accordance with the provisions of this chapter.

History: En. 66-3903 by Sec. 3, Ch. 543, L. 1975; R.C.M. 1947, 66-3903.

37-15-302. Application forms. Application for examination for licensing a speech pathologist or audiologist shall be made upon forms prescribed by the board.

History: En. 66-3908 by Sec. 9, Ch. 543, L. 1975; R.C.M. 1947, 66-3908(1).

Cross-References

Standardized forms, 37-1-101.

37-15-303. Qualifications. (1) To be eligible for licensing by the board as a speech pathologist or audiologist, the applicant must:

(a) meet the current academic, supervised clinical practicum, and postclassroom sponsored employment requirements of the ASHA;

(b) pass an examination approved by the board.

(2) The board shall determine the subject and scope of the examination.

History: En. 66-3906 by Sec. 7, Ch. 543, L. 1975; amd. Sec. 34, Ch. 101, L. 1977; R.C.M. 1947, 66-3906(part).

Cross-References

Licensing investigation and review — record access, 37-1-135.

37-15-304. Examination. (1) Except as otherwise provided in this chapter, an applicant shall be examined for speech pathology or audiology by the board and shall pay to the board, at least 30 days prior to the date of the examination, the examination fee for each examination as prescribed by this chapter.

(2) The board shall examine by written examination given at least twice a year at a time and place and under such supervision as the board may determine. In addition, an oral examination may be required by the board. Standards for acceptable performance shall be determined by the board.

(3) The board may waive the written examination for certification if the applicant has successfully passed the national examination in speech pathology or audiology.

(4) The board may examine or direct the applicant to be examined for knowledge in whatever theoretical or applied fields of speech pathology or audiology as it considers appropriate. It may also examine the candidate with regard to his professional skills and his judgment in the utilization of speech pathology or audiology techniques and methods.

(5) The department shall maintain a permanent record of all examination scores.

(6) The board shall keep an accurate transcript of the oral examination, if any. Transcripts of oral examinations shall be retained by the board for at least 1 year following the date of examination.

(7) An applicant who fails his examination may be reexamined at a subsequent examination upon payment of another examination fee. An applicant who fails two successive examinations may apply for reexamination after 2 years of additional professional experience or training.

History: (1) thru (6)En. 66-3909 by Sec. 10, Ch. 543, L. 1975; Sec. 66-3909, R.C.M. 1947; (7)En. 66-3906 by Sec. 7, Ch. 543, L. 1975; amd. Sec. 34, Ch. 101, L. 1977; Sec. 66-3906, R.C.M. 1947; R.C.M. 1947, 66-3906(part), 66-3909(1) thru (6).

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

Duties of Department, 37-1-101.

37-15-305. Practice pending disposition of application — waiver — provisional license. (1) A speech pathologist or audiologist who holds ASHA certification or equivalent or is licensed in another state and who has made application to the board for a license in this state may perform activities and services of a speech pathology or audiology nature without a valid license pending disposition of application.

(2) Prior to July 1, 1976, a provisional license may be issued to an individual who holds a bachelor's degree with a major in speech pathology or audiology, who has accumulated 175 clock hours of clinical practicum, and who has worked in this state as a speech pathologist or audiologist for at least 1 academic year. The provisionally licensed speech pathologist or audiologist must work under the direct supervision of a licensed or certified speech pathologist or audiologist. The extent to which direct supervision will be provided for the provisionally licensed speech pathologist or audiologist will be determined by the supervising clinician. Generally, the supervising speech pathologist or audiologist shall provide direct assistance to the provisionally licensed speech pathologist or audiologist at least 4 days per month. Most of the contacts by the supervising speech pathologist or audiologist shall be in person, but other avenues of contact may be made. Those persons granted provisional licensure shall complete the academic, clinical practicum, and

examination requirements for licensure within 6 years after July 1, 1975. Twelve quarter hour credits of additional professional training towards licensure qualifications, or any other proposed educational plan that leads to the same goal as presented to and approved by the board, must be obtained every 2 years for renewal of provisional licensure. Provisionally licensed speech pathologists or audiologists who have not attained appropriate eligibility status within 6 years of July 1, 1975, will no longer be eligible to practice speech pathology or audiology in the state of Montana, except for those persons granted certification under subsection (5) of this section, but may work as speech pathology or audiology aides, as defined in this chapter.

(3) The board shall waive the examination and grant a license to applicants who present proof of a current license in a state which has standards equivalent to or greater than those of this state.

(4) The board shall waive the examination and grant a license to those who hold the certificate of clinical competence of the American speech and hearing association in the area for which they are applying for a license.

(5) The board shall, on presentation and documentation in writing by a petitioner, have the prerogative of granting licensure to an individual who does not have all the formal requirements specified in this chapter. This prerogative shall be used only for unusual or special circumstances and shall be determined by the board in each individual case.

History: En. 66-3908, 66-3909 by Secs. 9, 10, Ch. 543, L. 1975; R.C.M. 1947, 66-3908(3), (6) thru (8), 66-3909(7).

37-15-306. Issuance of license. (1) The board shall grant a license to each person who meets the requirements for licensure as prescribed in this chapter, and the department shall issue the license.

(2) The license shall include the dates of issuance and expiration and shall bear a serial number.

(3) The license shall be signed by the secretary of the board under the seal of the board.

History: En. 66-3907 by Sec. 8, Ch. 543, L. 1975; R.C.M. 1947, 66-3907(1) thru (3).

37-15-307. Application and examination fee — license fee — registration fee. The amount of fees prescribed in connection with a license as a speech pathologist or audiologist and with registration as a speech pathology aide or audiology aide shall be determined by the board each year based on costs and predicted expenditures.

History: En. 66-3910 by Sec. 11, Ch. 543, L. 1975; R.C.M. 1947, 66-3910(1); amd. Sec. 39, Ch. 345, L. 1981; amd. Sec. 1, Ch. 368, L. 1985.

Compiler's Comments

1985 Amendment: Near middle of section after "audiologist", inserted "and with registration as a speech pathology aide or audiology aide".

1981 Amendment: Deleted "as follows, the exact fee to be" after "or audiologist shall be" in the middle of the first sentence of the section; and deleted ": (1) application and examination fee for a license, no less than $50 or more than $100; (2) license fee and renewal thereof, no less than $25 or more than $100" after "based on costs and predicted expenditures" at the end of the section.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-15-308. Renewal. (1) Each licensed speech pathologist or audiologist shall on or before October 31 of each year pay to the board the fee for the renewal of his license.

(2) The department shall notify each person licensed under this chapter relative to the date of expiration of his license and the amount of the renewal

fee. This notice shall be mailed to each licensed speech pathologist or audiologist at least 1 month before the expiration of the license.

(3) Renewal may be made at any time during the 60 days prior to the expiration date by application therefor.

(4) Failure on the part of any licensed person to pay the renewal fee by the expiration date does not deprive him of the right to renew his license, but the fee shall be increased 10% for each month that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal shall not exceed twice the normal renewal fee.

(5) Application for renewal following a lapse of 1 year or more shall be subject to review by the board, and the applicant may be requested to complete an examination successfully if the board so determines.

(6) A suspended license is subject to expiration and may be renewed as provided in this section, but such renewal does not entitle the licensee, while the license remains suspended, to engage in the licensed activity or in any other activity or conduct which violates the order or judgment by which the license was suspended.

(7) A license revoked on disciplinary grounds is subject to expiration, and it may not be renewed. If it is reinstated after its expiration, the licensee, as a condition of reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last preceding regular renewal date before the date on which it is reinstated plus the delinquency fee, if any, accrued at the time of its revocation.

(8) A person who fails to renew his license within the 4 years after its expiration may not renew it, and it may not be restored, reissued, or reinstated thereafter; but such a person may reapply for and obtain a new license if he meets the requirements of this chapter.

History: En. 66-3907, 66-3910 by Secs. 8, 11, Ch. 543, L. 1975; R.C.M. 1947, 66-3907(4) thru (7), 66-3910(3) thru (7); amd. Sec. 2, Ch. 368, L. 1985.

Compiler's Comments

1985 Amendment: In (1) after "before", substituted "October 31 of each year" for "July 31 of the year of expiration of his license"; and deleted former (2) that read: "Renewal will be every two years beginning on July 1 of the appropriate year."

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

37-15-309. Continuing education required for renewal. The board shall develop standards and methods of documentation and establish procedures for causing individuals who have been licensed to demonstrate continued education before renewing any license more than twice.

History: En. 66-3907 by Sec. 8, Ch. 543, L. 1975; R.C.M. 1947, 66-3907(9).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-15-310. Deposit of moneys received. All moneys received by the department shall be deposited in the state treasury to the credit of the state special revenue fund for the use of the board and subject to 37-1-101(6).

History: En. 66-3910 by Sec. 11, Ch. 543, L. 1975; R.C.M. 1947, 66-3910(2); amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

37-15-311. Municipal tax prohibited. No license tax shall be imposed upon speech pathologists or audiologists by a municipality or any other subdivision of the state.

History: **En. 66-3910 by Sec. 11, Ch. 543, L. 1975; R.C.M. 1947, 66-3910(8).**

37-15-312. Department to publish list of licensees and registrants. Each year the department shall publish a list of all persons licensed and registered under this chapter, containing their names and addresses and such other information as the board considers advisable. The department shall mail a copy of this list to each person licensed under this chapter, place a copy on file in the secretary of state's office, and furnish copies to the public upon request.

History: **En. 66-3907 by Sec. 8, Ch. 543, L. 1975; R.C.M. 1947, 66-3907(8); amd. Sec. 3, Ch. 368, L. 1985.**

Compiler's Comments

1985 Amendment: In first sentence after "licensed", inserted "and registered".

Cross-References

Prohibition on distribution or sale of mailing lists, 2-6-109.

37-15-313. Registration of aides. Each licensed speech pathologist and audiologist shall annually, on or before October 31, register with a board on forms provided by the board all speech pathology aides and audiology aides working directly under the supervision of the licensee.

History: **En. Sec. 4, Ch. 368, L. 1985.**

37-15-314 through 37-15-320 reserved.

37-15-321. Denial, suspension, or revocation of license — reinstatement. (1) The board may refuse to issue or renew a license or may suspend or revoke the license of any licensee if he has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. Such unprofessional conduct includes but is not limited to:

(a) obtaining a license by means of fraud, misrepresentation, or concealment of material facts;

(b) being found guilty of unprofessional conduct or having violated ethical standards of practice established pursuant to this chapter;

(c) violating any lawful order or rule of the board;

(d) violating any provision of this chapter.

(2) Where an applicant or licensee has been convicted of a felony or a crime involving moral turpitude, the board may suspend or revoke his license or may decline to issue a license when:

(a) the time for appeal has elapsed;

(b) the judgment of conviction has been affirmed on appeal;

(c) an order granting probation is made suspending the imposition of sentence.

(3) Denial, suspension, or revocation of a license is permissible only after a hearing and procedures which comply with all applicable requirements of the Montana Administrative Procedure Act.

(4) One year after denial, suspension, or revocation of a license, a person may reapply for a license. The board may in its discretion require an examination for reinstatement.

History: **En. 66-3911 by Sec. 12, Ch. 543, L. 1975; R.C.M. 1947, 66-3911.**

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unethical practices, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

37-15-322. Penalty. A person convicted of violating this chapter shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 66-3912 by Sec. 13, Ch. 543, L. 1975; R.C.M. 1947, 66-3912.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

37-15-323. Injunction of unlawful practice. The practice of speech pathology or audiology in any way other than as defined in this chapter may be enjoined by the district court on petition by the board.

History: En. 66-3913 by Sec. 14, Ch. 543, L. 1975; R.C.M. 1947, 66-3913.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunctions, 37-1-136.

CHAPTER 16

HEARING AID DISPENSERS

Part 1 — General

Section
37-16-101. Declaration of policy.
37-16-102. Definitions.
37-16-103. Exemptions.

Part 2 — Board of Hearing Aid Dispensers

37-16-201. Meetings — quorum — organization.
37-16-202. Powers and duties.
37-16-203. Compensation of members — expenses.

Part 3 — Regulatory Provisions

37-16-301. Permanent place of business in state necessary — records — notice.
37-16-302. Sale of dispensing business.
37-16-303. Bill of sale — examination by otolaryngologist — notation on receipt that examination not medical opinion.

Part 4 — Licensing

37-16-401. License required.
37-16-402. Application — qualifications — fee.
37-16-403. Examination — time and place.
37-16-404. Examination — subject areas.
37-16-405. Trainee license.

37-16-406. Admission of licensees from other states.
37-16-407. Renewal of license — fee.
37-16-408. Deposit of fees and fines.
37-16-409 and 37-16-410 reserved.
37-16-411. Revocation or suspension of license — fines.
37-16-412. Revocation, suspension, or denial — notice and hearing.
37-16-413. Penalty for unlawful practice — injunction.

Part 1

General

37-16-101. Declaration of policy. The selling, dispensing, and fitting of hearing aids is hereby declared to affect the public health and welfare and is subject to regulation and control in the public interest. This chapter shall be liberally construed to carry out the objectives and purposes hereinafter described in accordance with this declaration of policy.

History: En. Sec. 1, Ch. 204, L. 1969; R.C.M. 1947, 66-3001; amd. Sec. 1, Ch. 404, L. 1985.

Compiler's Comments

1985 Amendment: Near beginning, after "selling", inserted "dispensing".

37-16-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of hearing aid dispensers provided for in 2-15-1850.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "License" means a regular or trainee license.

(4) "Hearing aid" means an instrument or device designed for or represented as aiding or improving defective human hearing and parts, attachments, or accessories of the instrument or device.

(5) "Practice of selling, dispensing, and fitting hearing aids" means the evaluation or measurement of the powers or range of human hearing by means of an audiometer and a visual examination of the ear and canal or by any other means devised and the consequent selection, adaption, sale, dispensing, or fitting of hearing aids intended to compensate for hearing loss, including eyeglass hearing aids and their fittings, and the making of an impression of the ear and the subsequent selection of a proper ear mold, but does not include batteries, cords, or accessories.

History: En. Sec. 3, Ch. 204, L. 1969; amd. Sec. 292, Ch. 350, L. 1974; R.C.M. 1947, 66-3003; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 4, Ch. 444, L. 1981; amd. Sec. 2, Ch. 404, L. 1985.

Compiler's Comments

1985 Amendment: In (5) at beginning, after "Practice of", inserted "selling", and near middle after "sale", inserted "dispensing, or fitting".

1981 Amendments: Chapter 274 substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

Chapter 444 substituted ""License" means a regular or trainee license" for ""License" means a regular or temporary license" in (3); and inserted "and the subsequent selection of a proper ear mold" after "the making of an impression of the ear" near the end of (5).

37-16-103. Exemptions. (1) This chapter does not apply to a person who is a physician licensed to practice by the state board of medical examiners.

(2) This chapter does not apply to a person while he is engaged in the practice of fitting hearing aids if his practice is part of the academic curriculum of an accredited institution of higher education or part of a program conducted by a public agency.

History: En. Sec. 9, Ch. 204, L. 1969; amd. Sec. 297, Ch. 350, L. 1974; R.C.M. 1947, 66-3009; amd. Sec. 3, Ch. 404, L. 1985.

Compiler's Comments

1985 Amendment: In (2) after "public agency", deleted "or by a charitable or nonprofit organization which is primarily supported by voluntary contributions, unless they sell hearing aids".

Part 2

Board of Hearing Aid Dispensers

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1850.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-16-201. Meetings — quorum — organization. (1) The board shall meet at least once each year at a place and time determined by the chairman and at other times and places specified by the chairman to carry out this chapter. Three members constitute a quorum.

(2) Members of the board shall annually designate one member to serve as chairman and another member to serve as secretary-treasurer.

History: En. Sec. 6, Ch. 204, L. 1969; amd. Sec. 295, Ch. 350, L. 1974; R.C.M. 1947, 66-3006; amd. Sec. 5, Ch. 444, L. 1981.

Compiler's Comments

1981 Amendment: Deleted the requirement in the last sentence of subsection (1) that the otolaryngologist or the audiologist must be present to constitute a quorum.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Duty of Department to provide facilities, 37-1-101.

Disrupting meeting as disorderly conduct, 45-8-101.

37-16-202. Powers and duties. The powers and duties of the board are to:

(1) license persons who apply and are qualified to practice the fitting of hearing aids;

(2) establish a procedure to act as a grievance board to receive, investigate, and mediate complaints from any source concerning the activities of persons licensed under this chapter or their agents, whether licensed or not;

(3) suspend or revoke licenses under this chapter;

(4) designate the time and place for examining applicants for license and supervise and administer the examination;

(5) adopt rules necessary to carry out this chapter;

(6) require the periodic inspection and calibration of audiometric testing equipment and carry out periodic inspections of facilities of persons who practice the fitting or selling of hearing aids;

(7) prepare examinations required by the chapter;

(8) initiate legal action to enjoin from operation a person or corporation engaged in the sale, dispensing, or fitting of hearing aids in this state who is not licensed under this chapter.

History: **En. Sec. 5, Ch. 204, L. 1969; amd. Sec. 294, Ch. 350, L. 1974; R.C.M. 1947, 66-3005; amd. Sec. 6, Ch. 444, L. 1981; amd. Sec. 4, Ch. 404, L. 1985.**

Compiler's Comments

1985 Amendment: In (8) substituted "sale, dispensing, or fitting" for "sale and fitting".

1981 Amendment: Added "and supervise and administer the examination" at the end of subsection (4).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Duty of Department to administer and grade examinations, 37-1-101.

Duties of boards, 37-1-131.

Disciplinary authority of boards — injunctions, 37-1-136.

37-16-203. Compensation of members — expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: **En. Sec. 20, Ch. 204, L. 1969; amd. Sec. 303, Ch. 350, L. 1974; amd. Sec. 44, Ch. 439, L. 1975; R.C.M. 1947, 66-3020(2); amd. Sec. 12, Ch. 22, L. 1979; amd. Sec. 20, Ch. 474, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted language after "receive" for "$20 a day compensation when actually engaged in the discharge of his official duty and in addition shall be reimbursed for travel expense, as provided for in 2-18-501 through 2-18-503, in attending a meeting of the board in the state".

Part 3

Regulatory Provisions

37-16-301. Permanent place of business in state necessary — records — notice. (1) A person who is actively engaged in dispensing hearing aids as a business must have a permanent place of business in this state that will be opened to serve the public, having the necessary testing, fitting, and hearing aid accessories needed by the hard-of-hearing public in the wearing of hearing aids. All licensed hearing aid dispensers shall identify their permanent place of business in all advertising public notices and in all consumer correspondence, both written and verbal. More than one licensee may work from a permanent place of business.

(2) The department shall keep a record of the places of practice of persons who hold regular licenses or trainee licenses. A notice required to be given by the board or department to a person who holds a regular or trainee license may be given by mailing it to him at the address last given by him to the department.

(3) All licensed dispensers shall notify the board of any change of address within 30 days of the change. A trainee shall notify the board of any change of address within 10 days of the change.

History: **En. Sec. 15, Ch. 204, L. 1969; amd. Sec. 300, Ch. 350, L. 1974; R.C.M. 1947, 66-3015; amd. Sec. 7, Ch. 444, L. 1981; amd. Sec. 5, Ch. 404, L. 1985.**

Compiler's Comments

1985 Amendment: In (1) changed "A person who obtains a license to dispense" to "A person who is actively engaged in dispensing", and inserted last two sentences; and deleted former (2) that read: "Subsection (1) of this section does not apply to persons who obtain a license as salespeople representing a licensed hearing aid dispenser."

1981 Amendment: Substituted "trainee licenses" for "temporary license" at the end of the first sentence of (3) (now (2)) and in the middle of the second sentence in (3) (now (2)); and added (4) (now (3)).

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Public records, Title 2, ch. 6.
Duties of Department, 37-1-101.

37-16-302. Sale of dispensing business. A business selling, dispensing, or fitting hearing aids may be sold provided the new owners comply with all the provisions of this chapter.

History: En. Sec. 18, Ch. 204, L. 1969; R.C.M. 1947, 66-3018; amd. Sec. 6, Ch. 404, L. 1985.

Compiler's Comments

1985 Amendment: At beginning after "A business", inserted "selling" and after "dispensing", inserted "or fitting".

37-16-303. Bill of sale — examination by otolaryngologist — notation on receipt that examination not medical opinion. (1) Any person who practices the selling, fitting, or dispensing of hearing aids shall deliver to each person supplied with a hearing aid, by him or at his order or direction, a bill of sale which shall contain the seller's signature and show the name and address of his permanent place of business and the number of his license, together with a description of the make and type of the hearing aid furnished and the amount charged, with terms of guarantee, if any. The bill of sale shall also reveal the condition of the hearing device and whether it is new, used, or reconditioned.

(2) (a) Any person practicing the selling, dispensing, or fitting of hearing aids shall, when dealing with a person under 19 years of age, ascertain if the person has been examined by an otolaryngologist within 90 days prior to the fitting and shall obtain his recommendations. If such not be the case, a recommendation to do so must be made to the purchaser and this fact be noted on the receipt.

(b) Any person practicing the selling, dispensing, or fitting of hearing aids shall, when the aid is to be purchased with state funds, ascertain if the person has been examined by a licensed physician within 90 days prior to the fitting and shall obtain his recommendations. If such not be the case, a recommendation to do so must be made to the purchaser and this fact be noted on the receipt.

(3) Such receipt must bear, in no smaller type than the largest used in the body portion, the following: "Any examination(s) or representation(s) made by a licensed hearing aid dispenser in connection with the dispensing, fitting, and selling of this hearing aid(s) is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and, therefore, must not be regarded as medical opinion or advice."

History: En. Sec. 8, Ch. 204, L. 1969; R.C.M. 1947, 66-3008; amd. Sec. 7, Ch. 404, L. 1985.

Compiler's Comments

1985 Amendment: In (1) near beginning of first sentence, after "practices the", inserted "selling", and after "address of his", changed "regular" to "permanent"; in (2)(a) near beginning, after "practicing the", inserted "selling, dispensing, or", after "fitting", deleted "and sale", after "a person", changed "18" to "under 19", and after "age", deleted "and under or when the aid is to be purchased with state funds"; inserted (2)(b); and in (3) near middle, changed "hearing aid dealer and fitter" to "hearing aid dispenser" and after "with the", inserted "dispensing".

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Part 4

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-16-401. License required. A person may not engage in selling, dispensing, or fitting hearing aids or display a sign or in any other way advertise or hold himself out as a person who practices the selling, dispensing, or fitting of hearing aids in Montana unless he holds a current regular or temporary license issued by the department.

History: En. Sec. 7, Ch. 304, L. 1969; amd. Sec. 296, Ch. 350, L. 1974; R.C.M. 1947, 66-3007; amd. Sec. 8, Ch. 404, L. 1985.

Compiler's Comments

1985 Amendment: Near beginning, after "engage in", changed "the sale or practice of dispensing and" to "selling, dispensing, or"; near middle, after "practices the", changed "dispensing and fitting" to "selling, dispensing, or fitting"; and near end, after "hearing aids", inserted "in Montana".

37-16-402. Application — qualifications — fee. An applicant for a license shall pay a fee fixed by the board and commensurate with the costs of processing and administering his application and related functions of the board and shall show to the satisfaction of the board that he:

(1) is a person of good moral character;

(2) has an education equivalent to a 4-year course in an accredited high school, has continuously engaged in the practice of selling, fitting, or dispensing hearing aids in Montana during the 3 years preceding the date of application, or holds a current license as an audiologist under Title 37, chapter 15;

(3) is free of contagious or infectious disease.

History: En. Sec. 10, Ch. 204, L. 1969; R.C.M. 1947, 66-3010; amd. Sec. 40, Ch. 345, L. 1981; amd. Sec. 8, Ch. 444, L. 1981; amd. Sec. 9, Ch. 404, L. 1985.

Compiler's Comments

1985 Amendment: In (2) near middle, after "practice of", substituted "selling, fitting, or dispensing hearing aids in Montana" for "fitting and dispensing hearing aids".

1981 Amendments: Chapter 345 substituted "shall pay a fee prescribed by the board" for "shall pay a fee of $50" in the middle of the first sentence of the section.

Chapter 444 substituted "a fee fixed by the board and commensurate with the costs of processing and administering his application and related functions of the board" for "a fee of $50" near the beginning of the section; deleted "or" after "an accredited high school" near the beginning of subsection (2); and added "or that he holds a current license as an audiologist under Title 37, chapter 15" to the end of subsection (2).

Composite Section: The amendment to the fee provision contained in Ch. 444 was codified rather than the language in the Ch. 345 amendment because Ch. 444 contained broader language that included the Ch. 345 amendment.

Cross-References

Standardized forms, 37-1-104.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

37-16-403. Examination — time and place. An applicant for a license who is notified by the department that he has fulfilled the requirements of 37-16-402 shall appear at a time and place designated by the board to be examined by written and practical tests in order to demonstrate that he is qualified to practice the fitting of hearing aids.

History: **En. Sec. 11, Ch. 204, L. 1969; amd. Sec. 298, Ch. 350, L. 1974; R.C.M. 1947, 66-3011; amd. Sec. 10, Ch. 404, L. 1985.**

Compiler's Comments

1985 Amendment: Deleted former (2) that read: "The department shall, subject to 37-1-101, give examinations required to permit applicants to be examined within 30 days following the board's approval of the application for examination. Examination may be delayed on notice to the department under this section."

37-16-404. Examination — subject areas. The examination provided in 37-16-403(1) shall consist of a test of knowledge and practical tests of proficiency, where they apply, in the following areas as they pertain to the fitting of hearing aids:

(1) acoustics:
(a) general principles;
(b) the decibel;
(c) hearing and speech;
(2) the human ear:
(a) external;
(b) middle;
(c) inner;
(3) the hearing process;
(4) disorders of hearing:
(a) conductive;
(b) sensorineural;
(c) central;
(d) psychogenic;
(5) audiometry:
(a) pure tone;
(b) theory;
(c) procedures;
(d) speech;
(6) the hearing analysis:
(a) audiogram;
(b) auditory area;
(7) hearing aids:
(a) history;
(b) characteristics;
(c) components;
(8) practical use of the otoscope:
(a) earmold;
(b) impression;
(9) fittings:
(a) hearing aid;
(b) earmold;
(10) delivery and checkup; or
(11) any change as deemed necessary by the board.

History: **En. Sec. 12, Ch. 204, L. 1969; R.C.M. 1947, 66-3012.**

37-16-405. Trainee license. (1) An applicant who fulfills the requirements of 37-16-402 and who has not previously applied to take the practical examination under 37-16-403 may apply to the board for a trainee license.

(2) On receiving an application under subsection (1) of this section, accompanied by a fee fixed by the board and commensurate with the cost of administering the license and related functions of the board and verification that the applicant has passed the written portion of the examination with a score of at least 70%, the board shall issue a trainee license which entitles the applicant to engage in a 12-month training period during which he shall:

(a) pass the practical examination administered by the board;

(b) work for a period of 60 days during which he may do the testing necessary for proper selection and fitting of a hearing aid and make necessary impressions, but the delivery and final fitting of the hearing aid must be made by his supervisor; and

(c) work for the balance of the training period during which he may engage in all activities allowed a licensed hearing aid dispenser, but while under supervision of a licensed hearing aid dispenser.

(3) The training period must consist of a continuous 12-month term. Any break in training requires application for another trainee license under such rules as the board may prescribe.

(4) A trainee license may not be issued unless the board has on file an unrevoked statement from a licensed hearing aid dealer accepting responsibility for the trainee. Every licensee supervising a trainee license holder must submit a quarterly report of the trainee's activities and training assignments, on forms furnished by the board. The supervisor is responsible for all hearing aid fittings of the trainee. A supervisor may terminate his responsibilities to the trainee by mailing by certified mail written notice to the board and the trainee.

(5) If a person who holds a trainee license takes and fails to pass the practical examination given within his training period, the board may authorize the department to renew the trainee license for a period ending 30 days after the next examination. In no event may more than two renewals be permitted. The fee for renewal shall be set by the board commensurate with the cost of administering the license and related functions of the board.

(6) A person licensed as an audiologist under the provisions of Title 37, chapter 15, is exempt from the 12-month training period but is required to pass the examinations prescribed in this chapter.

History: En. Sec. 14, Ch. 204, L. 1969; amd. Sec. 299, Ch. 350, L. 1974; R.C.M. 1947, 66-3014; amd. Sec. 41, Ch. 345, L. 1981; amd. Sec. 9, Ch. 444, L. 1981; amd. Sec. 11, Ch. 404, L. 1985.

Compiler's Comments

1985 Amendment: In (1) near middle, before "examination", inserted "practical"; in introductory clause of (2) near middle, after "functions of the board", inserted "and verification that the applicant has passed the written portion of the examination with a score of at least 70%" and increased training period from 6 months to 12 months; in (2)(a) substituted present language for "work for a period of 30 days under the direct control of a hearing aid dispenser during which the trainee may not in any way fit a hearing aid or test a customer"; in (2)(b) at beginning deleted "after the completion of the period provided for in subsection (2)(a)"; in (3) increased training period from 6 months to 12 months; inserted (4); deleted former (4) and (5) that read: "(4) No trainee license may be issued by the board unless the applicant shows to the satisfaction of the board that he is or will be supervised and trained by a person who holds a valid license issued under this chapter.

(5) If a person who holds a trainee license does not take the next examination given after the completion of his training period, the trainee license may not be renewed except for a good cause shown to the satisfaction of the board"; in (5), near beginning after "pass the" substituted "practical examination given within his training period" for "next examination given after the completion of his training period", and near middle after "after the" substituted "next examination" for "results of the next examination

given after the dates of renewal are announced"; in (6) near end, after "exempt from the", substituted "12-month training period but is required to pass the examinations prescribed in this chapter" for "trainee license and examination requirements of this chapter".

1981 Amendments: Chapter 345 substituted "accompanied by a fee prescribed by the board" for "accompanied by a fee of $25" in the middle of (2); and substituted "The fee for renewal shall be prescribed by the board" for "The fee for renewal is $30" at the end of (6) (now (5)).

Chapter 444 substituted "trainee license" for "temporary license" wherever it appeared; substituted "board" for "department" wherever it appeared; substituted "a fee fixed by the board and commensurate with the cost of administering the license and related functions of the board" for "a fee of $25" in the middle of (2); substituted the restrictions on the holder of a trainee license in (2) for "a temporary license which entitles the applicant to practice the fitting and dispensing of hearing aids for a period ending 30 days after the conclusion of the next examination after the date of issue"; inserted subsection (3); substituted "after the completion of his training period" for "after the date of issue" in the middle of (5) (now deleted) and near the beginning of (6) (now (5)); substituted the last sentence of (6) (now (5)) for "The fee of renewal is $30"; and added subsection (7) (now (6)).

Composite Section: The amendments to the fee provisions in subsections (2) and (6) (now (5)) incorporated by Ch. 444 were codified rather than the language in the Ch. 345 amendments because Ch. 444 contained broader language that included the Ch. 345 amendments.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-16-406. Admission of licensees from other states. When the board determines that another state or jurisdiction has requirements equivalent to or higher than those in effect under this chapter for the practice of dispensing, fitting, and selling hearing aids and that the state or jurisdiction has a program equivalent to or stricter than the program for determining whether applicants under this chapter are qualified to sell, dispense, and fit hearing aids, the board may authorize the department to issue a license to applicants who hold current, unsuspended, and unrevoked licenses to fit, dispense, and sell hearing aids in the other state or jurisdiction. No such applicants for a license under this section are required to submit to or undergo a qualifying examination or the like, other than the payment of fees, if the person complies with all other requirements of this chapter.

History: En. Sec. 19, Ch. 204, L. 1969; amd. Sec. 302, Ch. 350, L. 1974; R.C.M. 1947, 66-3019; amd. Sec. 12, Ch. 404, L. 1985.

Compiler's Comments

1985 Amendment: In first sentence, near beginning after "practice of", inserted "dispensing", near middle after "qualified to", inserted "sell", and near end after "to fit", inserted "dispense".

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-16-407. Renewal of license — fee. (1) A person who practices the fitting of hearing aids shall annually pay to the department a fee as set by the board for a renewal of his license. The fee shall be fixed by the board to be commensurate with board costs in administering licensure and related board functions. The fee shall be increased 10% for each month or major portion thereof that the payment of the renewal fee is delayed after the expiration date. The maximum fee for a delayed renewal shall not exceed twice the normal renewal fee as set by the board. A person applying for renewal whose license was suspended for failure to renew is required to submit to the examinations described in 37-16-403 as a condition of renewal for a 3-year period after suspension.

(2) Each applicant for license renewal must submit evidence showing completion of 4 hours of continuing education completed during the preceding 12

months. The requirements of the continuing education programs are to be determined by the board by rule.

History: En. Sec. 16, Ch. 204, L. 1969; amd. Sec. 301, Ch. 350, L. 1974; amd. Sec. 14, Ch. 215, L. 1975; R.C.M. 1947, 66-3016; amd. Sec. 42, Ch. 345, L. 1981; amd. Sec. 10, Ch. 444, L. 1981; amd. Sec. 13, Ch. 404, L. 1985.

Compiler's Comments

1985 Amendment: In (1) near middle of last sentence, after "submit to", substituted "the examinations described in 37-16-403" for "an examination"; and inserted (2).

1981 Amendments: Chapter 345 deleted ", not to exceed $80," after "a fee" in the middle of first sentence of (1).

Chapter 444 deleted limitation that the fee may not exceed $80 in the middle of first sentence of (1); and inserted second sentence of (1).

Composite Section: The amendment to the fee provision contained in Ch. 444 was codified rather than the language in Ch. 345 amendment because Ch. 444 contained broader language that included the Ch. 345 amendment.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-16-408. Deposit of fees and fines. Fees and fines collected under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to appropriations and 37-1-101(6).

History: En. Sec. 20, Ch. 204, L. 1969; amd. Sec. 303, Ch. 350, L. 1974; amd. Sec. 44, Ch. 439, L. 1975; R.C.M. 1947, 66-3020(1); amd. Sec. 11, Ch. 444, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 14, Ch. 404, L. 1985.

Compiler's Comments

1985 Amendment: Near beginning after "Fees", inserted "and fines".

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

1981 Amendment: Deleted "by the department" after "Fees collected" at the beginning of the section; inserted "appropriations and" after "subject to" near the end of the section.

37-16-409 and 37-16-410 reserved.

37-16-411. Revocation or suspension of license — fines. A person registered under this chapter may have his license revoked or suspended for a fixed period to be determined by the board or be fined not to exceed $500 per incident for any of the following causes:

(1) being convicted of a felony, subject to chapter 1, part 2 of this title. The record of the conviction or a certified copy from the clerk of the court where the conviction occurred or certification by the judge of the court is conclusive evidence of the conviction, except that if the person has been pardoned by a governor or the president of the United States, the conviction does not constitute grounds for revocation or suspension.

(2) securing a license under this chapter through fraud or deceit or false statements;

(3) the personal use of a false name or alias in the practice of his profession;

(4) violating any of the provisions of this chapter;

(5) obtaining any fee or making any sale by fraud or misrepresentation;

(6) knowingly employing, directly or indirectly, any suspended or unlicensed person to perform any work covered by this chapter;

(7) using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is improbable, misleading, deceptive, or untruthful;

(8) representing that the services or advice of a person licensed to practice medicine or possessing certification as an audiologist will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true or using the terms "doctor", "clinic", "hearing clinic", "state registered", or other like words, abbreviations, or symbols which tend to connote the medical profession when that use is not accurate;

(9) permitting another to use his license or certificate;

(10) defaming competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations or falsely disparaging the products of competitors in any respect or their business methods, selling prices, values, credit terms, policies, or services;

(11) using any method of advertising prohibited by trade practice rules 1 through 17 of the federal trade commission;

(12) obtaining information concerning the business of a competitor by bribery of an employee or agent of such competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unlawful means;

(13) directly or indirectly giving or offering to give or permitting or causing to be given money or anything of value to any person who advises another in a professional capacity as an inducement to influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser or influencing persons to refrain from dealing in the products of competitors;

(14) unethical conduct or gross incompetence or negligence in the performance of his duties, including repeated failure to make indicated medical referrals of his customers;

(15) selling a hearing aid to a person who has not been given tests utilizing appropriate established procedures and instrumentation in fitting of hearing aids, except in cases of selling replacement hearing aids.

History: En. Sec. 17, Ch. 204, L. 1969; amd. Sec. 27, Ch. 101, L. 1977; R.C.M. 1947, 66-3017; amd. Sec. 15, Ch. 404, L. 1985.

Compiler's Comments

1985 Amendment: In lead-in, after "by the board", inserted "or be fined not to exceed $500 per incident"; in (3), after "profession", deleted "with fraudulent intent"; in (8), near middle after "clinic", inserted "hearing clinic" and at end, deleted "The term "hearing center" shall be discontinued in accordance with the code of ethics of the national hearing aid society"; and inserted (11).

Cross-References

Duty of Department to investigate unethical conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Unfair trade practices and consumer protection, Title 37, ch. 14.

37-16-412. Revocation, suspension, or denial — notice and hearing. No license issued under this chapter may be suspended, revoked, denied, or renewal denied without notice and opportunity for a hearing as provided under the Montana Administrative Procedure Act.

History: En. Sec. 22, Ch. 204, L. 1969; amd. Sec. 304, Ch. 350, L. 1974; amd. Sec. 28, Ch. 101, L. 1977; R.C.M. 1947, 66-3022; amd. Sec. 12, Ch. 444, L. 1981.

Compiler's Comments

1981 Amendment: Added "as provided under the Montana Administrative Procedure Act" at the end of the section.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Reporting disciplinary actions against licensees, 37-1-105.

Disciplinary authority of boards — injunctions, 37-1-136.

37-16-413. Penalty for unlawful practice — injunction. (1) Any person who practices the selling, fitting, or dispensing of hearing aids without a valid license shall be guilty of a misdemeanor and upon conviction be fined not more than $500 or be imprisoned for not more than 90 days, or both.

(2) The board may enforce any provision of this chapter by injunction or by any other appropriate proceeding.

History: En. Sec. 21, Ch. 204, L. 1969; R.C.M. 1947, 66-3021; amd. Sec. 16, Ch. 404, L. 1985.

Compiler's Comments

1985 Amendment: In (1) near beginning, after "practices the" inserted "selling".

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunctions, 37-1-136.

CHAPTER 17

PSYCHOLOGISTS

Part 1 — General

Section

37-17-101. Purpose.
37-17-102. Definitions.
37-17-103. Limitation of license authority.
37-17-104. Exemptions.

Part 2 — Board of Psychologists

37-17-201. Meetings — expenses of members — attorney general as board attorney — seal.
37-17-202. Powers.

Part 3 — Licensing

37-17-301. License required.
37-17-302. Application — qualifications.
37-17-303. Examination.
37-17-304. Admission of licensees from other states.
37-17-305. Issuance of license.
37-17-306. Annual renewal.
37-17-307. Fees — deposit of fees.
37-17-308. Department to publish list of licensees.
37-17-309 and 37-17-310 reserved.
37-17-311. Denial or revocation of license — grounds — notice and hearing.
37-17-312. Penalty.
37-17-313. Injunction for unlawful practice.

Chapter Cross-References

Psychologist-client privilege, 26-1-807.

Validity of consent to medical treatment, Title 41, ch. 1, part 4.

Psychologists' duty to report child abuse, 41-3-201.

Part 1

General

37-17-101. Purpose. The legislature finds and declares that the practice of psychology in Montana affects the public health, safety, and welfare and should therefore be subject to regulation and control in the public interest in order to protect the public from the unauthorized and unqualified practice of psychology and from unprofessional conduct by persons licensed to practice psychology.

History: En. Sec. 1, Ch. 73, L. 1971; R.C.M. 1947, 66-3201.

37-17-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Accredited college or university" means a college or university accredited by the regional accrediting association for institutions of higher learning, such as the northwest association of secondary and higher schools.

(2) "Board" means the board of psychologists provided for in 2-15-1851.

(3) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(4) A person represents himself to be a "psychologist" when he holds himself out to the public by a title or description of services incorporating the words "psychologist", "psychological", "psychologic", or "psychology" and offers to render or renders psychological services defined in subsection (5) of this section to individuals, groups, corporations, or the public for compensation or fee.

(5) "Practice of psychology" means the application, while representing oneself to be a psychologist, of principles, methods, and procedures of understanding, predicting, and influencing behavior, such as the principles pertaining to learning, perception, motivation, thinking, emotions, and interpersonal relationships; the methods and procedures of interviewing, counseling, and behavior modification, including psychotherapeutic techniques and hypnosis; and constructing, administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions, and motivation.

History: En. Sec. 2, Ch. 73, L. 1971; amd. Sec. 312, Ch. 350, L. 1974; R.C.M. 1947, 66-3202; amd. Sec. 13, Ch. 22, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 5, Ch. 324, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 274 substituted "department of commerce" for "department of professional and occupational licensing" in (3); changed internal references to the department and the board.

Chapter 324 inserted "while representing oneself to be a psychologist" after "the application" near the beginning of (5).

37-17-103. Limitation of license authority. Nothing in this chapter shall be construed as permitting psychologists to prescribe drugs, perform surgery, or administer electroconvulsive therapy.

History: En. Sec. 14, Ch. 73, L. 1971; R.C.M. 1947, 66-3214(2).

37-17-104. Exemptions. This chapter does not prevent:

(1) qualified members of other professions, such as physicians, social workers, lawyers, pastoral counselors, or educators, from doing work of a psychological nature consistent with their training if they do not hold themselves

out to the public by a title or description incorporating the words "psychology" or "psychologist";

(2) the activities, services, and use of an official title on the part of a person in the employ of a federal, state, county, or municipal agency or of other political subdivisions or an educational or charitable institution insofar as these activities and services are a part of the duties of his office or position with the agency or institution;

(3) the activities and services of a student, intern, or resident in psychology pursuing a course of study at an accredited university or college or working in a generally recognized training center if these activities and services constitute a part of his supervised course of study;

(4) the activities and services of a person who is not a resident of this state in rendering consulting psychological services in this state when these services are rendered for a period which does not exceed, in the aggregate, 60 days during a calendar year if the person is authorized under the laws of the state or country of his residence to perform these activities and services; however, these persons shall report to the department the nature and extent of the services in this state if they exceed 10 days in a calendar year;

(5) a person authorized by the laws of the state or country of his former residence to perform activities and services, who has recently become a resident of this state and who has applied for a license in this state, from performing such activities and services pending disposition of his application;

(6) the use of the term "social psychologist" by a person who:

(a) has been graduated with a doctoral degree in sociology or social psychology from an institution and whose credits in sociology or social psychology are acceptable by a recognized educational institution;

(b) has passed comprehensive examinations in the field of social psychology as part of the requirement for the doctoral degree or who has had equivalent specialized training in social psychology; and

(c) has filed with the department a statement of facts demonstrating his compliance with this subsection;

(7) the offering of lecture services for a fee by a person exempted from licensing requirements by virtue of his employment;

(8) activities of a psychological nature on the part of a person who is a salaried employee of an accredited academic institution, governmental agency, research laboratory, or business corporation if he is performing the duties for which he is employed by the organization within the confines of the organization.

History: En. Sec. 3, Ch. 73, L. 1971; amd. Sec. 313, Ch. 350, L. 1974; R.C.M. 1947, 66-3203(2); amd. Sec. 14, Ch. 22, L. 1979; amd. Sec. 6, Ch. 324, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "and the codes of ethics of their respective professions" after "their training" in (1).

Part 2

Board of Psychologists

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1851.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-17-201. Meetings — expenses of members — attorney general as board attorney — seal. (1) The board shall hold a regular annual meeting in which it shall select from its members a chairman and a secretary. Other regular meetings shall be held at such times as the rules of the board provide. Special meetings may be held at times considered necessary or advisable by the chairman and the majority of its members or on the request of the governor. Reasonable notice of meetings shall be given in the manner prescribed by the board. The quorum of the board consists of the majority of its members. The department shall keep a record of the board's proceedings.

(2) Each board member shall receive compensation and travel expenses as provided for in 37-1-133.

(3) The attorney general shall act as attorney for the board. He or his representative may sit as an ex officio member of the board in an advisory capacity only.

(4) The board shall adopt an official seal.

History: En. Sec. 5, Ch. 73, L. 1971; amd. Sec. 315, Ch. 350, L. 1974; amd. Sec. 12, Ch. 453, L. 1977; R.C.M. 1947, 66-3205(1), (2), (4), (5); amd. Sec. 21, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: In (2), inserted "compensation and" after "receive", and substituted "37-1-133" for "2-18-501 through 2-18-503, as amended, incidental to board meetings".

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Duties of Attorney General, 2-15-501.

Duty of Department to provide facilities, 37-1-101.

Disrupting meeting as disorderly conduct, 45-8-101.

37-17-202. Powers. (1) The board may make reasonable and necessary rules for the proper performance of its duties and for the regulation of proceedings before it.

(2) In addition to the other powers and duties set forth, the board may:

(a) revoke and suspend licenses;

(b) conduct hearings upon complaints concerning persons licensed under this chapter;

(c) cause the prosecution and enjoinder of all persons violating this chapter, by the complaint of its secretary signed with the county attorney, in the county where the violation took place and incur necessary expenses therefor;

(d) study and review new developments in research, training, and the practice of psychology and make recommendations to the governor and other state officials regarding new and revised programs and legislation related to psychology which could be beneficial to the citizens of the state of Montana.

History: (1)En. Sec. 5, Ch. 73, L. 1971; amd. Sec. 315, Ch. 350, L. 1974; amd. Sec. 12, Ch. 453, L. 1977; Sec. 66-3205, R.C.M. 1947; (2)En. Sec. 7, Ch. 73, L. 1971; Sec. 66-3207, R.C.M. 1947; R.C.M. 1947, 66-3205(3), 66-3207.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Duties of boards, 37-1-131.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-17-301. License required. A person may not represent himself to be a psychologist or engage in the practice of psychology unless he is licensed under this chapter.

History: En. Sec. 3, Ch. 73, L. 1971; amd. Sec. 313, Ch. 350, L. 1974; R.C.M. 1947, 66-3203(1).

37-17-302. Application — qualifications. (1) Application for examination for licensing a psychologist shall be made on forms prescribed by the board.

(2) The board shall license as a psychologist any person who pays the prescribed fee, passes the prescribed examination, and submits evidence by oath that he:

(a) is a resident of or shows satisfactory evidence of intent to become a resident of this state at the time he is licensed;

(b) is at least 18 years of age;

(c) is of good moral character;

(d) has received a doctoral degree based on a program of studies, primarily psychological in content, from an accredited college or university having an appropriate graduate program;

(e) has completed at the time of application a minimum of 2 years of experience in the practice, research, or teaching of psychology. One year of this experience shall be post doctoral.

History: En. Sec. 8, Ch. 73, L. 1971; amd. Sec. 25, Ch. 94, L. 1973; amd. Sec. 317, Ch. 350, L. 1974; R.C.M. 1947, 66-3208(1), (2).

Cross-References

Rules for determining residency, 1-1-215.

Licensing investigation and review — record access, 37-1-135.

Nondiscrimination in licensing, 49-3-204.

37-17-303. Examination. (1) The department shall administer examinations to qualified applicants for licensing at least once a year, subject to 37-1-101. The board shall determine the subject and scope of specialized psychological areas and techniques for examination. Examinations may be written, oral, or both. The board shall determine an acceptable level of performance for each examination.

(2) An applicant who fails his first examination may be reexamined at a subsequent examination on the payment of another examination fee. An applicant who fails two successive examinations may apply for reexamination after 2 years of additional professional experience or training.

History: En. Sec. 6, Ch. 73, L. 1971; amd. Sec. 316, Ch. 350, L. 1974; R.C.M. 1947, 66-3206(1), (2).

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-17-304. Admission of licensees from other states. A license without examination may be issued to a psychologist licensed or certified in another state where the licensing or certification requirements are substantially equivalent to the requirements of this chapter or to a psychologist who is a diplomate in good standing of the American board of professional psychology.

History: En. Sec. 8, Ch. 73, L. 1971; amd. Sec. 25, Ch. 94, L. 1973; amd. Sec. 317, Ch. 350, L. 1974; R.C.M. 1947, 66-3208(3).

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-17-305. Issuance of license. The department shall issue a license to each person who meets the requirements for licensure as prescribed in this chapter. The license shall include the dates of issuance and expiration and shall bear a serial number. It shall be signed by the secretary of the board under the seal of the board.

History: En. Sec. 6, Ch. 73, L. 1971; amd. Sec. 316, Ch. 350, L. 1974; R.C.M. 1947, 66-3206(3).

37-17-306. Annual renewal. (1) The license expires on January 1 following the date of its issuance or renewal and is invalid thereafter. The department shall notify each person licensed under this chapter relative to the date of the expiration of his license and the amount of his renewal fee. This notice shall be mailed to each licensed psychologist at his listed address at least 1 month before the expiration of the license.

(2) Renewal may be made by application during the 60 days prior to the expiration date. Failure on the part of a person licensed to pay his renewal fee by the expiration date does not deprive him of the right to renew his license, but the fee shall be increased 10% for each month or major portion thereof that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal may not exceed twice the normal renewal fee. Application for renewal following a lapse of 1 year or more will be subject to review by the board, and the applicant may be requested to complete an examination successfully if the board so determines.

History: En. Sec. 6, Ch. 73, L. 1971; amd. Sec. 316, Ch. 350, L. 1974; R.C.M. 1947, 66-3206(4), (5).

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

37-17-307. Fees — deposit of fees. (1) The department shall collect the following fees, none of which is refundable:

(a) application fee;

(b) examination fee, an amount commensurate with the charge of the professional examination service and administrative costs of the department and as set by the board;

(c) certificate fee;

(d) renewal fee.

(2) Renewal certificates shall be secured annually and dated January 2.

(3) Fees received by the department shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 11, Ch. 73, L. 1971; amd. Sec. 1, Ch. 59, L. 1974; amd. Sec. 319, Ch. 350, L. 1971; R.C.M. 1947, 66-3211; amd. Sec. 43, Ch. 345, L. 1981; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

1981 Amendment: Deleted ", $25 to $50" after "application fee" in (1)(a); deleted ", $10" after "certificate fee" in (1)(c); deleted ", $20 to $50" after "renewal fee" in (1)(d); deleted former subsection (2) which provided "The board may set the application fee and the annual renewal fee annually within the above limits"; and deleted former subsection (3) which provided "The initial certificate fee shall be prorated as follows:

(a) if the certificate is issued between January 2 and March 31, $10;

(b) if the certificate is issued between April 1 and June 30, $7.50;

(c) if the certificate is issued between July 1 and September 30, $5;

(d) if the certificate is issued between October 1 and January 1, $2.50."

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-17-308. Department to publish list of licensees. The department shall publish yearly a list of psychologists licensed under this chapter. This list shall contain names and addresses and other information the board considers advisable. The department shall mail a copy of this list to each person licensed under this chapter, place a copy on file in the secretary of state's office, and furnish copies to the public on request.

History: En. Sec. 6, Ch. 73, L. 1971; amd. Sec. 316, Ch. 350, L. 1974; R.C.M. 1947, 66-3206(6).

Cross-References

Prohibition on distribution or sale of mailing lists, 2-6-109.

37-17-309 and 37-17-310 reserved.

37-17-311. Denial or revocation of license — grounds — notice and hearing. (1) A license applied for or issued under this chapter may be refused or revoked by the board on proof that the person to whom the license was issued:

(a) has been guilty of fraud or deceit in securing the license or a renewal;

(b) is using a narcotic or an alcoholic beverage to an extent that the use impairs his ability to perform the work of a professional psychologist with safety to the public; or

(c) has been guilty of unprofessional conduct as defined by the code of ethics adopted by the board.

(2) The board may not revoke or refuse to issue or renew a license for any cause other than failure to pay fees unless the person is given notice and opportunity for a hearing before the board.

History: En. Sec. 9, Ch. 73, L. 1971; amd. Sec. 318, Ch. 350, L. 1974; R.C.M. 1947, 66-3209; amd. Sec. 7, Ch. 324, L. 1981.

Compiler's Comments

1981 Amendment: Deleted former subsection (1)(a) that read "has been convicted of a felony"; substituted "adopted by the board" for "published by the American psychological association" at the end of (1)(c).

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Nondiscrimination in licensing, 49-3-204.

37-17-312. Penalty. Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding 6 months or by a fine not exceeding $500, or by both.

History: En. Sec. 13, Ch. 73, L. 1971; R.C.M. 1947, 66-3213.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

37-17-313. Injunction for unlawful practice. The practice of psychology in any way other than as defined in this chapter may be enjoined by the district court on petition by the board. In any such proceeding, it shall not be necessary to show that any person is individually injured by the actions complained of. If the respondent is found to have so practiced, the court shall enjoin him from so practicing unless and until he has been duly licensed. Procedure in such cases shall be the same as in any other injunction suit. The remedy by injunction hereby given is in addition to criminal prosecution and punishment.

History: En. Sec. 14, Ch. 73, L. 1971; R.C.M. 1947, 66-3214(1).

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunctions, 37-1-136.

CHAPTER 18

VETERINARY MEDICINE

Part 1 — General

Section

37-18-101. Definitions.
37-18-102. Veterinary medicine defined.
37-18-103. Repealed.
37-18-104. Exemptions.

Part 2 — Board of Veterinary Medicine

37-18-201. Organization — meetings.
37-18-202. Powers of board and department — examinations — prosecutions.
37-18-203. Compensation and expenses of members — department records of board proceedings and licensees.

Part 3 — Licensing—Veterinary Medicine

37-18-301. License required.
37-18-302. Application — qualification — fee.
37-18-303. Examination — temporary permit pending examination.
37-18-304. Reciprocity.
37-18-305. License — issuance and contents.
37-18-306. Display of license and certificate.
37-18-307. Renewal — fee — continuing education — automatic renewal for military personnel.
37-18-308. Deposit of money.
37-18-309 and 37-18-310 reserved.
37-18-311. Refusal, suspension, or revocation of license — right to notice and hearing.

Part 4 — Licensing—Veterinary Technology (Repealed. Sec. 7, Ch. 96, L. 1981)

Part 5 — Remedies for Violation

37-18-501. Penalty.
37-18-502. Injunction.

Chapter Cross-References

Veterinarian as member of Board of Health and Environmental Sciences, 2-15-2104.

Rules on veterinary practice to be included in standards for horseracing, 23-4-104.

Professional service corporations, Title 35, ch. 4.

Part 1

General

37-18-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of veterinary medicine provided for in 2-15-1852.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

History: En. 66-2201.1 by Sec. 205, Ch. 350, L. 1974; R.C.M. 1947, 66-2201.1; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 2, Ch. 43, L. 1985.

Compiler's Comments

1985 Amendment: In (1) substituted "board of veterinary medicine" for "board of veterinarians".

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

37-18-102. Veterinary medicine defined. (1) A person is considered practicing veterinary medicine when he does any of the following:

(a) represents himself as or is engaged in the practice of veterinary medicine in any of its branches, either directly or indirectly;

(b) uses words, titles, or letters in this connection or on a display or advertisement or under circumstances so as to induce the belief the person using them is engaged in the practice of veterinary medicine. This use is prima facie evidence of the intention to represent oneself as engaged in the practice of veterinary medicine in any of its branches.

(c) diagnoses, prescribes, or administers a drug, medicine, appliance, application, or treatment of whatever nature or performs a surgical operation or manipulation for the prevention, cure, or relief of a pain, deformity, wound, fracture, bodily injury, physical condition, or disease of animals;

(d) instructs, demonstrates, or solicits by a notice, sign, or other indication, with contract either express or implied, or otherwise, with or without the necessary instruments for the administration of biologics or medicines or animal disease cures for the prevention and treatment of disease of animals and remedies for the treatment of internal parasites in animals;

(e) performs a manual or laboratory procedure on livestock for the diagnosis of pregnancy, sterility, or infertility for remuneration or hire;

(f) performs acupuncture, ova or embryo transfer, or dentistry on animals;

(g) instructs others, except those covered under the provisions of 37-18-104(3), for compensation, in any manner how to perform any acts which constitute the practice of veterinary medicine.

(2) Nothing in subsection (1)(e) of this section shall in any way be construed to prohibit the pregnancy testing by any person of his own farm animals or by his employees regularly employed in the conduct of his business or by other persons whose services are rendered gratuitously.

(3) Nothing in this section shall be construed as modifying, amending, altering, or repealing any part of 37-18-104.

History: (1)En. Sec. 9, Ch. 82, L. 1913; re-en. Sec. 3225, R.C.M. 1921; re-en. Sec. 3225, R.C.M. 1935; amd. Sec. 7, Ch. 90, L. 1955; amd. Sec. 1, Ch. 191, L. 1965; amd. Sec. 211, Ch. 350, L. 1974; amd. Sec. 7, Ch. 135, L. 1975; Sec. 66-2209, R.C.M. 1947; (2)En. Sec. 2, Ch. 191, L. 1965; Sec. 66-2209.1, R.C.M. 1947; (3)En. Sec. 3, Ch. 191, L. 1965; Sec. 66-2209.2, R.C.M. 1947; R.C.M. 1947, 66-2209(1), 66-2209.1, 66-2209.2; amd. Sec. 3, Ch. 43, L. 1985.

Compiler's Comments

1985 Amendment: In (1)(f) inserted "or dentistry".

37-18-103. Repealed. Sec. 7, Ch. 96, L. 1981.

History: En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(2).

37-18-104. Exemptions. (1) This chapter does not apply to:

(a) veterinarians in the performance of their official duties, either civil or military, in the service of the United States unless they engage in the practice of veterinary medicine in a private capacity;

(b) laboratory technicians and veterinary research workers, as distinguished from veterinarians, in the employ of this state or the United States and engaged in labors in laboratories under the direct supervision of the board of livestock, Montana state university, or the United States;

(c) lawfully qualified veterinarians from other states or a foreign country meeting legally licensed and registered Montana veterinarians in this state in consultation;

(d) a veterinarian residing on a border of a neighboring state and authorized under the laws thereof to practice veterinary medicine therein, who is actually called to attend cases in this state but who does not open an office or appoint a place to meet patients or receive calls in this state, if veterinarians licensed and registered in this state are extended a like privilege to engage in the practice of veterinary medicine to the same extent in the neighboring state;

(e) the employment as assistants to veterinarians licensed and registered under this chapter of veterinary medical students who have successfully completed 3 years of the professional curriculum in veterinary medicine at a college having educational standards equal to those approved by the American veterinary medical association and authorized by law to confer degrees.

(2) The operations known and designated as castrating or dehorning of cattle, sheep, horses, and swine are not the practice of veterinary medicine within the meaning of this chapter.

(3) This chapter does not prohibit a person from treating his own farm animals or being assisted in this treatment by his employees employed in the conduct of his business or by other persons whose services are rendered gratuitously in case of emergency.

(4) This chapter does not prohibit the selling of veterinary remedies and instruments by a registered pharmacist at his regular place of business.

History: En. Sec. 11, Ch. 82, L. 1913; re-en. Sec. 3227, R.C.M. 1921; re-en. Sec. 3227, R.C.M. 1935; amd. Sec. 9, Ch. 90, L. 1955; amd. Sec. 213, Ch. 350, L. 1974; amd. Sec. 8, Ch. 135, L. 1975; R.C.M. 1947, 66-2211; amd. Sec. 4, Ch. 43, L. 1985.

Compiler's Comments

1985 Amendment: In (1)(e) deleted former last two sentences that read: "However, this employment may not be contracted for or entered into except after written application for approval directed to the board and the written grant of approval by the board. This employment may not be for a period in excess of 6 months from the date of completion of the third year of study".

Part 2

Board of Veterinary Medicine

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1852.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-18-201. Organization — meetings. (1) A board member shall receive a certificate of appointment from the governor.

(2) The board shall annually elect from its members a president, vice-president, and secretary-treasurer and shall hold at least two regular meetings each year. At a meeting four members of the board constitute a quorum. If a member of the board, without cause, absents himself from two of its regular meetings consecutively, his office is vacant.

History: En. Sec. 2, Ch. 82, L. 1913; re-en. Sec. 3218, R.C.M. 1921; re-en. Sec. 3218, R.C.M. 1935; amd. Sec. 2, Ch. 90, L. 1955; amd. Sec. 206, Ch. 350, L. 1974; amd. Sec. 5, Ch. 135, L. 1975; R.C.M. 1947, 66-2202(1), (2).

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Duty of Department to provide facilities, 37-1-101.

Disrupting meeting as disorderly conduct, 45-8-101.

37-18-202. Powers of board and department — examinations — prosecutions. (1) The board may adopt rules and orders necessary for the performance of its duties, prescribe forms for application for examination and license, and prepare examinations. The department shall, subject to 37-1-101, supervise the examination of applicants for license to practice veterinary medicine, obtain the services of professional examination agencies instead of its own preparation of examinations, and grant and revoke licenses.

(2) The department may employ attorneys, subject to the approval of the attorney general, to assist county attorneys in prosecutions brought under this chapter in the respective district courts of the state or to assist the attorney general in representing the board before the supreme court.

History: En. Sec. 2, Ch. 82, L. 1913; re-en. Sec. 3218, R.C.M. 1921; re-en. Sec. 3218, R.C.M. 1935; amd. Sec. 2, Ch. 90, L. 1955; amd. Sec. 206, Ch. 350, L. 1974; amd. Sec. 5, Ch. 135, L. 1975; R.C.M. 1947, 66-2202(3), (4); amd. Sec. 3, Ch. 96, L. 1981.

Compiler's Comments

1981 Amendment: Deleted former subsection (2), relating to issuance of veterinary technicians' licenses.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Duties of boards, 37-1-131.

37-18-203. Compensation and expenses of members — department records of board proceedings and licensees. (1) Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.

(2) The department shall keep complete records of the board's proceedings and of its receipts and disbursements and a full and accurate list of persons licensed and registered by the board. These records are public records and are at all times open to public inspection.

History: En. Sec. 3, Ch. 82, L. 1913; re-en. Sec. 3219, R.C.M. 1921; re-en. Sec. 3219, R.C.M. 1935; amd. Sec. 3, Ch. 90, L. 1955; amd. Sec. 126, Ch. 147, L. 1963; amd. Sec. 27, Ch. 177, L. 1965; amd. Sec. 26, Ch. 93, L. 1969; amd. Sec. 207, Ch. 350, L. 1974; amd. Sec. 38, Ch. 439, L. 1975; amd. Sec. 3, Ch. 531, L. 1977; R.C.M. 1947, 66-2203(1), (2); amd. Sec. 22, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: In (1), inserted "compensation and" after "receive", and substituted "37-1-133" for "2-18-501 through 2-18-503. In addition, each member of the board may receive compensation of $25 per day for attending board meetings".

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

Prohibition on distribution and sale of mailing lists, 2-6-109.

Duties of Department, 37-1-101.

Licensing investigation and review — record access, 37-1-135.

Part 3

Licensing — Veterinary Medicine

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-18-301. License required. A person may not practice veterinary medicine or veterinary surgery in this state unless licensed and registered as required by this chapter, nor may a person practice veterinary medicine or surgery whose authority to practice is suspended or revoked by the board.

History: En. Sec. 9, Ch. 82, L. 1913; re-en. Sec. 3225, R.C.M. 1921; re-en. Sec. 3225, R.C.M. 1935; amd. Sec. 7, Ch. 90, L. 1955; amd. Sec. 1, Ch. 191, L. 1965; amd. Sec. 211, Ch. 350, L. 1974; amd. Sec. 7, Ch. 135, L. 1975; R.C.M. 1947, 66-2209(2).

37-18-302. Application — qualification — fee. A person desiring to begin the practice of veterinary medicine or veterinary surgery in this state or who desires to hold himself out to the public as a practitioner of veterinary medicine or veterinary surgery, except as provided in 37-18-104, shall make application to the department for a license to do so. The application shall be on a form furnished by the department and shall be accompanied by satisfactory evidence of the good moral character of the applicant and shall present evidence of his having graduated in and received a degree from a legally authorized veterinary medical school having educational standards equal to those approved by the American veterinary medical association. On application, a photostatic copy of the diploma of the applicant shall be submitted to the department for inspection and verification. The photostatic copy remains the property of the department. A person applying for a license to practice shall pay to the department a nonrefundable fee commensurate with the costs of the examinations and set annually by the board.

History: En. Sec. 4, Ch. 82, L. 1913; amd. Sec. 1, Ch. 150, L. 1919; re-en. Sec. 3220, R.C.M. 1921; re-en. Sec. 3220, R.C.M. 1935; amd. Sec. 4, Ch. 90, L. 1955; amd. Sec. 127, Ch. 147, L.

1963; amd. Sec. 7, Ch. 168, L. 1971; amd. Sec. 208, Ch. 350, L. 1974; R.C.M. 1947, 66-2204(part); amd. Sec. 1, Ch. 431, L. 1979; amd. Sec. 5, Ch. 341, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "person" for "citizen of the United States" at the beginning of the section.

Cross-References

Standardized forms, 37-1-104.

Licensing investigation and review — record access, 37-1-135.

Nondiscrimination in licensing, 49-3-204.

37-18-303. Examination — temporary permit pending examination. (1) Subject to 37-1-101, the board shall by means of examination, either oral, written, or practical or a combination of oral, written, or practical as the board determines, ascertain the professional qualifications for license of applicants under this part. An investigation under reciprocity arrangements may replace examination for licensees from other states under 37-18-304. The department shall issue a license to all who are found to be, in the judgment of the board, competent to practice. A license may not be issued to a person who is not found by the examination or investigation to be competent.

(2) The examination shall be held when determined necessary by the board, but not less frequently than once each year at a time and place specified by the board. The examination shall cover theory and practice, pharmacology and therapeutics, animal sanitation, surgery, communicable diseases, and other subjects chosen by the board which are ordinarily included in the curriculum of a school of veterinary medicine recognized and approved by the American veterinary medical association.

(3) The department shall consecutively number applications received, note on each the disposition made of it, and preserve them for reference and shall number consecutively licenses issued.

(4) Applicants must achieve a grade of 70% in all subjects in order to obtain a license. An applicant who has failed an examination may apply to be reexamined at a subsequent examination and shall pay another application fee commensurate with the costs of the examinations and set annually by the board and shall take another complete examination in all subjects.

(5) An applicant for examination may, in the discretion of the board, be given a temporary permit to practice veterinary medicine prior to taking the examination if the applicant is employed by and working under the supervision of and in the same office with a veterinarian licensed under this part. The temporary permit is valid only until the date of the next examination. Under no circumstances may a second temporary permit be issued to the same person. A temporary permit may not be issued to a person who has failed an examination given under this section.

History: En. Sec. 4, Ch. 82, L. 1913; amd. Sec. 1, Ch. 150, L. 1919; re-en. Sec. 3220, R.C.M. 1921; re-en. Sec. 3220, R.C.M. 1935; amd. Sec. 4, Ch. 90, L. 1955; amd. Sec. 127, Ch. 147, L. 1963; amd. Sec. 7, Ch. 168, L. 1971; amd. Sec. 208, Ch. 350, L. 1974; R.C.M. 1947, 66-2204(part); amd. Sec. 2, Ch. 431, L. 1979; amd. Sec. 4, Ch. 96, L. 1981.

Compiler's Comments

1981 Amendment: At the beginning of (2), substituted "shall be held when determined necessary by the board, but not less frequently than once each year" for "shall be held in January and June of each year".

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-18-304. Reciprocity. (1) The board may make arrangement with similar boards in the several states, insofar as practicable, whereby due credit for state and territorial licenses may be allowed in this state to the licensees of these boards who desire to secure a license to practice veterinary medicine in this state and by which licensees of the board in this state may secure credit for license issued by this board when the licensees desire to secure a license to practice in another state or territory. No arrangement may be made under this section which may lower the standard of practice of veterinary medicine in this state. The board may, if necessary, require an examination of applicants for a license from other states after a careful consideration of the credentials from these states. The board shall establish methods and procedures for investigation of applicants for a license by reciprocity.

(2) No license may be issued as a result of reciprocity between the states to an applicant unless he has been lawfully and continuously in practice as a licensed veterinarian for at least 1 year in the state from which he applies immediately preceding the date of his application for a license to practice in this state.

History: En. Sec. 8, Ch. 82, L. 1913; re-en. Sec. 3224, R.C.M. 1921; re-en. Sec. 3224, R.C.M. 1935; amd. Sec. 6, Ch. 90, L. 1955; amd. Sec. 210, Ch. 350, L. 1974; R.C.M. 1947, 66-2208(2).

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing investigation and review — record access, 37-1-135.

37-18-305. License — issuance and contents. (1) The board shall, at the conclusion of a regular examination or after investigation under the reciprocity arrangements of 37-18-304 if in its judgment the applicant is qualified, authorize the department to issue a license to practice veterinary medicine.

(2) Every license granted shall be issued under seal and shall be signed by the president and secretary-treasurer of the board and shall state that the licensee has given satisfactory evidence of fitness as to age, character, veterinary medical education, and other matters required by law and that after full examination, or investigation under reciprocity arrangements, he has been found qualified to practice.

History: En. Sec. 7, Ch. 82, L. 1913; re-en. Sec. 3223, R.C.M. 1921; re-en. Sec. 3223, R.C.M. 1935; amd. Sec. 5, Ch. 90, L. 1955; amd. Sec. 209, Ch. 350, L. 1974; amd. Sec. 6, Ch. 135, L. 1975; R.C.M. 1947, 66-2207(1), (2).

37-18-306. Display of license and certificate. A person may not practice veterinary medicine in this state without possessing and displaying prominently in his principal office a license and a current and valid certificate of registration issued under this part.

History: En. Sec. 8, Ch. 82, L. 1913; re-en. Sec. 3224, R.C.M. 1921; re-en. Sec. 3224, R.C.M. 1935; amd. Sec. 6, Ch. 90, L. 1955; amd. Sec. 210, Ch. 350, L. 1974; R.C.M. 1947, 66-2208(1).

37-18-307. Renewal — fee — continuing education — automatic renewal for military personnel. (1) A person licensed to practice veterinary medicine in this state shall procure from the department before November 1 annually his certificate of registration. The certificate shall be issued by the department on the payment of a fee to be fixed annually by the board and the presentation of evidence satisfactory to the board that the licensee, in the year preceding the application for renewal, attended an educational program approved by the board. However, the board may authorize the department to issue renewals, but not consecutive renewals, on a showing satisfactory to the board that attendance at the educational programs was unavoidably prevented; and new licensees who secure licenses by examination shall be granted a renewal the first year without attending the educational programs. The certificate is prima facie evidence of the right of the holder to practice veterinary medicine in this state during the time for which it is issued.

(2) Failure of a person licensed to procure a certificate of registration before November 1, annually, constitutes a forfeiture of the license held by the person. A person who has thus forfeited his license may have it restored to him by making written application for restoration within 1 year of the forfeiture, setting forth the reasons for failure to procure the certificate of registration at the time specified and accompanied by payment of the registration fee provided for in this section and an additional restoration fee as the board requires and by presentation of evidence satisfactory to the board that he has fulfilled the continuing educational requirements of all licensees recited above. The person making application for restoration of license within 1 year of its forfeiture is not required to submit to examination.

(3) Notwithstanding any other provisions in this chapter, a person licensed who enters or is called to active duty by a branch of the armed services of the United States is entitled to receive automatic registration of his license during the period of his duty with the armed services. However, within 1 year after release or discharge from duty in the armed services he shall procure a certificate of renewal from the department and pay the regular fee. Failure to procure the certificate of renewal within 1 year after release or discharge is the equivalent of a failure to procure a certificate of registration before November 1 of any year, and the same forfeiture and restoration requirements apply.

(4) A person licensed shall at all times have his residence and office address on file with the department.

History: En. Sec. 7, Ch. 82, L. 1913; re-en. Sec. 3223, R.C.M. 1921; re-en. Sec. 3223, R.C.M. 1935; amd. Sec. 5, Ch. 90, L. 1955; amd. Sec. 209, Ch. 350, L. 1974; amd. Sec. 6, Ch. 135, L. 1975; R.C.M. 1947, 66-2207(3) thru (5); amd. Sec. 44, Ch. 345, L. 1981; amd. Sec. 5, Ch. 43, L. 1985.

Compiler's Comments

1985 Amendment: In (1) in first sentence changed July 1 to November 1 and in next-to-last sentence substituted "new licensees who secure licenses by examination shall be granted a renewal the first year" for "new licensees who secure licenses by examination during the 6 months preceding July 1 shall be granted renewals"; in first sentence of (2) and in last sentence of (3) changed "July 1" to "November 1".

1981 Amendment: Deleted ", not exceeding the sum of $25," after "fee to be fixed annually by the board" in the middle of the second sentence of (1); and deleted ", not in excess of $25," after "restoration fee" in the middle of the second sentence of (2).

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-18-308. Deposit of money. Money received under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 3, Ch. 82, L. 1913; re-en. Sec. 3219, R.C.M. 1921; re-en. Sec. 3219, R.C.M. 1935; amd. Sec. 3, Ch. 90, L. 1955; amd. Sec. 126, Ch. 147, L. 1963; amd. Sec. 27, Ch. 177, L.

1965; amd. Sec. 26, Ch. 93, L. 1969; amd. Sec. 207, Ch. 350, L. 1974; amd. Sec. 38, Ch. 439, L. 1975; amd. Sec. 3, Ch. 531, L. 1977; R.C.M. 1947, 66-2203(3); amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

37-18-309 and 37-18-310 reserved.

37-18-311. Refusal, suspension, or revocation of license — right to notice and hearing. (1) The board may, with respect to the practice of veterinary medicine, either refuse to grant a license or a certificate of registration or suspend or revoke a license and certificate of registration on any of the following grounds:

(a) fraud or deception in procuring the license;

(b) publication or use of an untruthful or improper statement or representation with the view of deceiving the public or a client or customer in connection with the practice of veterinary medicine;

(c) conviction of a felony as shown by a certified copy of the record of the court of conviction, subject to chapter 1, part 2, of this title;

(d) habitual intemperance in the use of intoxicating liquors or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs or, subject to chapter 1, part 2, of this title, conviction of a violation of a federal or state law relating to narcotic drugs;

(e) immoral, unprofessional, or dishonorable conduct manifestly disqualifying the licensee from practicing veterinary medicine;

(f) gross malpractice, including failure to furnish to the board on written application by it a report or information relating thereto;

(g) employment of unlicensed persons to perform work which under this chapter can lawfully be done only by persons licensed to practice veterinary medicine;

(h) fraud or dishonest conduct in applying or reporting diagnostic biological tests or in issuing health certificates;

(i) failure to keep one's premises in a clean and sanitary condition;

(j) violation of this part or of the rules or orders of the board;

(k) revocation by proper authorities for any of the above reasons of a license issued by another state.

(2) The board may not refuse to issue a license or certificate of registration or suspend or revoke a license and certificate of registration for any cause unless the person accused has been given notice and a public hearing by the board.

History: En. Sec. 10, Ch. 82, L. 1913; re-en. Sec. 3226, R.C.M. 1921; re-en. Sec. 3226, R.C.M. 1935; amd. Sec. 8, Ch. 90, L. 1955; amd. Sec. 212, Ch. 350, L. 1974; amd. Sec. 18, Ch. 101, L. 1977; R.C.M. 1947, 66-2210.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

Part 4

Licensing — Veterinary Technology (Repealed. Sec. 7, Ch. 96, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

37-18-401. En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(3); amd. Sec. 3, Ch. 431, L. 1979.

37-18-402. En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(4), (6).

37-18-403. En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(5); amd. Sec. 45, Ch. 345, L. 1981.

37-18-404. En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(7).

37-18-405. En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(8), (9); amd. Sec. 46, Ch. 345, L. 1981.

37-18-406 through 37-18-410 reserved.

37-18-411. En. 66-2214 by Sec. 2, Ch. 135, L. 1975; amd. Sec. 20, Ch. 101, L. 1977; R.C.M. 1947, 66-2214.

Part 5

Remedies for Violation

Part Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

37-18-501. Penalty. A person practicing veterinary medicine within this state, as defined in this chapter, without first having obtained a license to practice and being registered as required by this chapter or after his license to practice has been suspended or revoked or contrary to the provisions of this chapter in any manner is guilty of a misdemeanor for each violation of the provisions of this chapter or for each act relating to the practice of veterinary medicine in this state and upon conviction shall be punished by a fine of not less than $200 or more than $500, or by imprisonment in the county jail for not less than 30 days or more than 6 months, or by both such fine and imprisonment. Any person convicted a second time for any violation of this chapter shall be punished by both such fine and imprisonment. The district court has jurisdiction of all prosecutions brought hereunder.

History: En. Sec. 12, Ch. 82, L. 1913; re-en. Sec. 3228, R.C.M. 1921; re-en. Sec. 3228, R.C.M. 1935; amd. Sec. 10, Ch. 90, L. 1955; amd. Sec. 19, Ch. 101, L. 1977; R.C.M. 1947, 66-2212; amd. Sec. 5, Ch. 96, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "or veterinary technology" after "veterinary medicine" in two places.

37-18-502. Injunction. The board or any person may bring an action in the district court to enjoin any person who is not licensed from engaging in the practice of veterinary medicine unless otherwise exempted under 37-18-104(3). If the court finds that the defendant is violating or threatening to violate any provision of Title 37, chapter 18, it shall enter an order restraining him from the violation, without regard to any criminal provisions of Title 37, chapter 18.

History: En. 66-2215 by Sec. 3, Ch. 135, L. 1975; R.C.M. 1947, 66-2215; amd. Sec. 6, Ch. 96, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "or veterinary technology" after "veterinary medicine".

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.
Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.
Affidavits, Title 26, ch. 1, part 10.
Disciplinary authority of boards — injunctions, 37-1-136.

CHAPTER 19

MORTICIANS AND FUNERAL DIRECTORS

Part 1 — General

Section
37-19-101. Definitions.

Part 2 — Board of Morticians

37-19-201. Organization — compensation and expenses of members.
37-19-202. Meetings — quorum — rulemaking power.

Part 3 — Licensing of Morticians and Funeral Directors

37-19-301. Funeral director's license — renewal — fee.
37-19-302. License required for practice of mortuary science — qualifications of applicants.
37-19-303. Mortician's license — application fee.
37-19-304. Issuance of intern's license — license fee — issuance of mortician's license on completion of internship.
37-19-305. Reciprocity.
37-19-306. Annual renewal of mortician's license — fee — suspension for nonrenewal.
37-19-307. Deposit of money received.
37-19-308 through 37-19-310 reserved.
37-19-311. Refusal, suspension, or revocation of mortician's or funeral director's license.
37-19-312. Suspension or revocation of license — right to notice and hearing.
37-19-313 and 37-19-314 reserved.
37-19-315. Funeral costs — rules on disclosure.
37-19-316. Continuing education requirements.

Part 4 — Licensing of Mortuaries

37-19-401. License required — display of license.
37-19-402. Operator's license requirement.
37-19-403. Power of board to set standards — inspection.
37-19-404. Suspension, revocation of mortuary license.

Part 5 — Remedies for Violation

37-19-501. Penalty provision.

Chapter Cross-References
Liability for cremated remains, 35-21-304.
Cadavers and autopsies, Title 50, ch. 21.

Part 1

General

37-19-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of morticians provided for in 2-15-1853.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Embalming" means the preservation and disinfection of the dead human body by application of chemicals, externally, internally, or both.

(4) "Funeral directing" includes:

(a) supervising funerals;

(b) preparing dead bodies for burial, other than by embalming;

(c) maintaining a mortuary for the preparation, disposition, or care of dead human bodies; and

(d) the holding out to the public that one is a funeral director or undertaker.

(5) "Mortuary science" is the profession or practice of funeral directing and embalming.

(6) A "mortician" is a person licensed under this chapter to practice mortuary science.

(7) A "mortuary" is a place of business used for the care and preparation for burial or transportation of dead human bodies or a place where a person represents himself as engaged in the profession of mortuary science or funeral directing.

History: En. Sec. 1, Ch. 41, L. 1963; amd. Sec. 260, Ch. 350, L. 1974; R.C.M. 1947, 66-2701; amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

Part 2

Board of Morticians

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1853.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-19-201. Organization — compensation and expenses of members. The board shall elect a chairman, secretary-treasurer, and other necessary officers. Board members are entitled to receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 3, Ch. 41, L. 1963; amd. Sec. 262, Ch. 350, L. 1974; amd. Sec. 42, Ch. 439, L. 1975; amd. Sec. 4, Ch. 531, L. 1977; R.C.M. 1947, 66-2703; amd. Sec. 23, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Substituted the second sentence for "Board members may serve for a compensation of $25 per day for attending board meetings and shall be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, connected with attending meetings or in the discharge of other board duties".

37-19-202. Meetings — quorum — rulemaking power. The board shall hold such meetings as may be necessary. Three members constitute a quorum for the transaction of business. The board may adopt and enforce rules to carry out the purposes of this chapter.

History: En. Sec. 4, Ch. 41, L. 1963; R.C.M. 1947, 66-2704.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.
Duty of Department to provide facilities, 37-1-101.
Duties of boards, 37-1-131.
Disrupting meeting as disorderly conduct, 45-8-101.

Part 3

Licensing of Morticians and Funeral Directors

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.
Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-19-301. Funeral director's license — renewal — fee. The practice of funeral directing by anyone who does not hold a funeral director's license or a mortician's license issued by the department is prohibited. A person licensed to practice funeral directing on June 1, 1963, is entitled to an annual renewal of his license on payment of a renewal fee to the department on July 1 of each year. The amount of the annual renewal license fee shall be set by the board. A funeral director's license may not be issued to a person who is not licensed by the board of embalmers and funeral directors to practice funeral directing on June 1, 1963.

History: En. Sec. 7, Ch. 41, L. 1963; amd. Sec. 264, Ch. 350, L. 1974; amd. Sec. 11, Ch. 215, L. 1975; R.C.M. 1947, 66-2707; amd. Sec. 47, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "but may not exceed $25" after "fee shall be set by the board" at the end of the third sentence.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.
Licensing boards to establish fees commensurate with costs, 37-1-134.

37-19-302. License required for practice of mortuary science — qualifications of applicants. (1) The practice of embalming or mortuary science by anyone who does not hold a mortician's license issued by the board is prohibited. A person 18 years of age or older wishing to practice mortuary science in this state must apply to the board on the form and in the manner prescribed by the board.

(2) To qualify for a mortician's license, a person must:

(a) be of good moral character;

(b) present evidence of having satisfactorily completed 90 quarter credits or the equivalent of study at an accredited college or university;

(c) in addition to the 90 quarter credits or the equivalent of study required in subsection (2)(b), have graduated with a diploma from an accredited college of mortuary science;

(d) pass an examination prescribed by the board; and

(e) serve a 1-year internship under the supervision of a licensed mortician in a licensed mortuary in Montana after passing the examination provided for in subsection (2)(d).

(3) A person who fails the examination required in subsection (2)(d) may retake it under conditions prescribed by rule of the board.

History: En. Sec. 8, Ch. 41, L. 1963; amd. Sec. 9, Ch. 168, L. 1971; amd. Sec. 265, Ch. 350, L. 1974; R.C.M. 1947, 66-2708; amd. Sec. 4, Ch. 378, L. 1981; amd. Sec. 1, Ch. 510, L. 1985.

Compiler's Comments

1985 Amendment: In first sentence of (1) substituted "board" for "department", inserted last sentence of (1); at beginning of (2)(b) substituted "present evidence of having satisfactorily completed 90 quarter credits or the equivalent of study" for "have graduated from an accredited college of mortuary science and have satisfactorily completed 2 academic years" and at end of (2)(b) deleted "or have experience considered equivalent by the board"; inserted (2)(c); in (2)(e) before "mortician" inserted "licensed" and at end inserted "after passing the examination provided for in subsection (2)(d)"; and inserted (3).

1981 Amendment: Added "or have experience considered equivalent by the board" at the end of (2) (now (2)(b)).

Cross-References

Licensing investigation and review — record access, 37-1-135.

37-19-303. Mortician's license — application fee. A person possessing the necessary qualifications may apply to the department for a license and on payment of an application fee, as set by the board, may take the examination prescribed by the board. The examination shall be held on the second Wednesday of July each year in Helena and at such other times and places as the board considers necessary.

History: En. Sec. 9, Ch. 41, L. 1963; amd. Sec. 266, Ch. 350, L. 1974; amd. Sec. 12, Ch. 215, L. 1975; R.C.M. 1947, 66-2709; amd. Sec. 48, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "but not to exceed $75" after "fee, as set by the board" in the middle of the first sentence.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-19-304. Issuance of intern's license — license fee — issuance of mortician's license on completion of internship. An applicant who passes the examination provided for in 37-19-302 shall, upon payment of a license fee prescribed by the board, be granted an intern mortician's license to practice mortuary science under the supervision of a licensed mortician in a licensed mortuary in Montana and, upon completion of 1 year's internship and payment of the annual license fee, may apply for and receive a mortician's license.

History: En. Sec. 10, Ch. 41, L. 1963; R.C.M. 1947, 66-2710; amd. Sec. 49, Ch. 345, L. 1981; amd. Sec. 2, Ch. 510, L. 1985.

Compiler's Comments

1985 Amendment: Near beginning of section, after "examination", inserted "provided for in 37-19-302"; before "mortician" inserted "licensed".

1981 Amendment: Substituted "a license fee prescribed by the board" for "a license fee of $3" near the beginning of the section.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-19-305. Reciprocity. If a person holding a license entitling him to practice mortuary science in another state applies for a Montana mortician's license, the board may waive the examination and internship requirements if it finds that the standards and requirements of the state in which the applicant is licensed are equal to or exceed those of Montana and if a reciprocal agreement is required by the other state, it has a reciprocal agreement with Montana.

History: En. Sec. 12, Ch. 41, L. 1963; R.C.M. 1947, 66-2712; amd. Sec. 5, Ch. 378, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "a reciprocal agreement is required by the other state, it" for "such state" after "Montana and if" near the end of the section.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-19-306. Annual renewal of mortician's license — fee — suspension for nonrenewal. (1) The annual license fee for a mortician's license must be postmarked before July 1 of the assessment year. The amount of the annual renewal fee shall be set by the board.

(2) Failure to pay the annual renewal fee results in automatic suspension of the license. The license may be reinstated by the payment of unpaid renewal fees plus a penalty prescribed by the board.

History: En. Sec. 11, Ch. 41, L. 1963; amd. Sec. 267, Ch. 350, L. 1974; amd. Sec. 13, Ch. 215, L. 1975; R.C.M. 1974, 66-2711; amd. Sec. 50, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "but may not exceed $50" after "renewal fee shall be set by the board" at the end of (1); and substituted "plus a penalty prescribed by the board" for "plus a penalty of $25" at the end of (2).

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-19-307. Deposit of money received. Money collected by the department under this chapter shall be deposited for the use of the board, subject to 37-1-101(6).

History: En. Sec. 6, Ch. 41, L. 1963; amd. Sec. 263, Ch. 350, L. 1974; R.C.M. 1947, 66-2706.

37-19-308 through 37-19-310 reserved.

37-19-311. Refusal, suspension, or revocation of mortician's or funeral director's license. The board may refuse to grant, may suspend, or may revoke a mortician's or funeral director's license for any of the following reasons:

(1) if the applicant or licensee obtained the license by fraud or misrepresentation, either in the application for the license or in passing the examination;

(2) if the applicant or licensee has violated any section of this chapter or any rule of the state, district, or local board of health governing the disposition of dead human bodies or any rule of the board regulating the professions of mortuary science or funeral directing or the operation of a mortuary;

(3) if the licensee has participated in any scheme in the nature of a burial association or burial certificate plan:

(a) which does not properly protect the rights of the public;

(b) where there is any element of fraud; or

(c) where there is contained any agreement or provision that deprives heirs, next of kin, or any other authorized person freedom of choice as to the services or merchandise used in connection with a funeral or the freedom of choice as to which funeral directors or morticians shall be employed;

(4) if the applicant or licensee violates rules adopted by the board which define unprofessional conduct on the part of applicants and licensees.

History: En. Sec. 14, Ch. 41, L. 1963; R.C.M. 1947, 66-2714; amd. Sec. 6, Ch. 378, L. 1981; amd. Sec. 3, Ch. 510, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (4).

1981 Amendment: Deleted former subsection (2) relating to conviction of a felony.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.
Duty of Board to adopt rules on conduct, 37-1-131.
Licensing investigation and review — record access, 37-1-135.
Disciplinary authority of boards — injunctions, 37-1-136.
Licensure of criminal offenders, Title 37, ch. 1, part 2.

37-19-312. Suspension or revocation of license — right to notice and hearing. No action to suspend, revoke, or cancel a license may be taken by the board until the accused has been given notice and a hearing on the charges. If, at the hearing, the board finds the charges true, it may revoke or suspend the license of the accused person.

History: En. Sec. 15, Ch. 41, L. 1963; amd. Sec. 268, Ch. 350, L. 1974; R.C.M. 1947, 66-2715.

Cross-References
Contested case as including licensing, 2-4-102.
Contested case procedure, Title 2, ch. 4, part 6.

37-19-313 and 37-19-314 reserved.

37-19-315. Funeral costs — rules on disclosure. The board shall adopt rules requiring mortuaries to disclose in writing to all customers a complete itemized list of all funeral costs and complete information regarding the need for embalming.

History: En. Sec. 7, Ch. 378, L. 1981.

Cross-References
Adoption and publication of rules, Title 2, ch. 4, part 3.

37-19-316. Continuing education requirements. The board may establish by rule continuing education programs and continuing education requirements. Compliance with continuing education requirements may be used as a condition of continued licensure. In adopting rules and individual orders regarding continuing education, the board in its discretion:

(1) may use or rely upon guidelines and pronouncements of recognized educational and professional associations;

(2) may prescribe the content, duration, and organization of courses;

(3) shall take into account the accessibility to applicants of such continuing education as it may require; and

(4) shall avoid any impediments to interstate practice that may result from differences in continuing education requirements in other states.

History: En. Sec. 8, Ch. 378, L. 1981.

Cross-References
Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 4

Licensing of Mortuaries

Part Cross-References
Licensing to follow contested case procedure, 2-4-631.
Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-19-401. License required — display of license. An operating mortuary must be licensed by the board. The license must be displayed in a conspicuous place.

History: En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(part).

37-19-402. Operator's license requirement. The operation of a mortuary is prohibited by anyone not holding a mortician's or funeral director's license.

History: En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(4).

37-19-403. Power of board to set standards — inspection. (1) The board may adopt rules prescribing reasonable standards for operating mortuaries, including minimum requirements for drainage, ventilation, and instruments, and may inspect the premises of a mortuary establishment to determine if such rules are complied with. Such inspection or inspections shall be made at the discretion of the board and may be without notice.

(2) The board may charge the operator an inspection fee to be set at the discretion of the board.

History: En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(part); amd. Sec. 51, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "but not to exceed $25 per year" after "fee to be set at the discretion of the board" at the end of (2).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Duties of boards, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-19-404. Suspension, revocation of mortuary license. A mortuary license may be suspended or revoked upon proof of:

(1) noncompliance of board rules relating to the operation of mortuaries;

(2) violation of any of the laws or rules of the state, district, or local board of health governing the disposition of dead human bodies; or

(3) violation of any rule of the board regulating the practice of mortuary science and funeral directing.

History: En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(3).

Cross-References

Liability for cremated remains, 35-21-304.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Cadavers and autopsies, Title 50, ch. 21.

Part 5

Remedies for Violation

37-19-501. Penalty provision. A person who violates this chapter is guilty of a misdemeanor.

History: En. Sec. 17, Ch. 41, L. 1963; R.C.M. 1947, 66-2717.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Misdemeanor penalty when none specified, 46-18-212.

CHAPTER 20

PHYSICIANS' ASSISTANTS

Part 1 — General

Section
37-20-101. Qualifications of supervising physician and physicians' assistants.
37-20-102. Insurance requirement.
37-20-103. Limitations on authority conferred — exception.
37-20-104. Penalty — enforcement.

Part 2 — Board of Medical Examiners

37-20-201. Duties of board of medical examiners — compensation and expenses of members.
37-20-202. Adoption of rules.

Part 3 — Utilization Plans

37-20-301. Utilization plan required — contents — approval.
37-20-302. Utilization plan approval fee — renewal of approval — renewal fee.
37-20-303. Exemptions from approval requirement.

Chapter Cross-References

Limits on liability for emergency care rendered at scene of accident or emergency, 27-1-714.

General provisions relating to health care practitioners, Title 37, ch. 2.

Emergency medical services, Title 50, ch. 6.

Health care information, Title 50, ch. 16.

Part 1

General

Part Cross-References

Duty of physician's assistant to report violations of Montana Elder Abuse Prevention Act, 53-5-511.

37-20-101. Qualifications of supervising physician and physicians' assistants. (1) Each supervising physician named in the utilization plan required by 37-20-301 shall:

(a) possess a current, unrestricted license to practice medicine in this state;

(b) submit a statement to the Montana state board of medical examiners that, in his opinion, the assistant to be employed is of good character and is both mentally and physically able to perform the duties of a physician's assistant described in the utilization plan;

(c) submit a statement to the board that he will exercise supervision over the physician's assistant in accordance with any rules adopted by the board and will retain professional and legal responsibility for the care and treatment of his patients; and

(d) submit detailed information to the board regarding the physician's professional background, medical education, internship and residency, continuing education received, membership in state and national medical associations, hospital and staff privileges, and such other information as the board may require.

(2) Except as provided in subsection (3), each physician's assistant named in the utilization plan required by 37-20-301 shall:

(a) be of good character;

(b) be a graduate of a physician's assistant training program approved by the American medical association;

(c) have taken an examination recognized by the national commission on physicians' assistants and received a score satisfactory to the board;

(d) hold a current certification by the national commission on physicians' assistants; and

(e) submit to the board detailed information on the applicant's history, education, and experience and such other information as the board may require.

(3) In lieu of the requirements of subsections (2)(b), (2)(c), and (2)(d) the physician's assistant may be a graduate of an approved medical school as defined in 37-3-102 and pass an examination approved by the board.

History: En. Sec. 3, Ch. 380, L. 1981.

Cross-References

Licensing investigation and review — record access, 37-1-135.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Licensing of physicians, Title 37, ch. 3, part 3.

Unsworn falsification to authorities, 45-7-203.

Nondiscrimination in licensing, 49-3-204.

37-20-102. Insurance requirement. No physician's assistant may perform any service unless he has insurance from liability for his errors, omissions, or actions to the limits required by the hospital's governing authority.

History: En. Sec. 8, Ch. 380, L. 1981.

37-20-103. Limitations on authority conferred — exception. Except as provided in 37-10-102, nothing in this chapter may be construed to authorize a physician's assistant to perform those functions and duties specifically delegated by law to persons licensed as optometrists as defined under Title 37, chapter 10.

History: En. Sec. 10, Ch. 380, L. 1981.

37-20-104. Penalty — enforcement. (1) Any person who employs a physician's assistant or holds himself out to be a qualified physician's assistant without the approval of the Montana state board of medical examiners is guilty of a misdemeanor and is punishable as provided in 46-18-212.

(2) In addition to seeking any criminal penalty available under this section, the board may withdraw its approval of any utilization plan previously approved which is applicable to any supervising physician or physician's assistant who:

(a) acts in violation of this section;

(b) obtained the approval of the board by fraud;

(c) acts in a manner contrary to the terms of the utilization plan; or

(d) violates any of the applicable provisions of this chapter or rules of the board adopted thereunder.

(3) The board may enforce the provisions of this section by the remedy of injunction.

History: En. Sec. 5, Ch. 380, L. 1981.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Part 2

Board of Medical Examiners

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1841.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

Board of Medical Examiners, Title 37, ch. 3, part 2.

37-20-201. Duties of board of medical examiners — compensation and expenses of members. The Montana state board of medical examiners provided for in 2-15-1841 shall administer the provisions of this chapter under such procedure as it considers advisable and may adopt reasonable rules to carry out the provisions of this chapter. Each member of the board shall receive the compensation and travel expenses provided for in 37-3-206 while engaged in the active and necessary discharge of his duties under this chapter.

History: En. Sec. 1, Ch. 380, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Duties of boards, 37-1-131.

37-20-202. Adoption of rules. The board of medical examiners shall adopt administrative rules to implement the provisions of this chapter that:

(1) address the issues of supervision and direction limitations and requirements;

(2) address the issue of protocols for interaction of medical personnel with differing responsibilities;

(3) specify that a physician may not utilize more than one physician's assistant unless he can demonstrate to the board the ability to supervise more than one assistant adequately; and

(4) address other considerations pertinent to the approval of physicians' assistants utilization plans and the health care needs of the public.

History: En. Sec. 9, Ch. 380, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Duty of boards to adopt rules on conduct, 37-1-121.

Part 3

Utilization Plans

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-20-301. Utilization plan required — contents — approval. (1) No physician, office, firm, state institution, or professional service corporation may employ or make use of the services of a physician's assistant in the practice of medicine, as defined in 37-3-102, and no physician's assistant may be employed as a physician's assistant unless the assistant is supervised by a licensed physician and unless such employment or use has been approved by the Montana state board of medical examiners in a physician's assistant utilization plan.

(2) A physician's assistant utilization plan must set forth in detail the following information:

(a) the name and qualifications of the supervising physician and the physician's assistant, as provided in 37-20-101;

(b) the nature and location of the physician's medical practice;

(c) the duties to be delegated to the physician's assistant and the location in which those duties are to be performed;

(d) the name and qualifications of a second physician meeting the requirements of 37-20-101 to serve in the place of the supervising physician in the event that the supervising physician is unable to supervise the physician's assistant temporarily; and

(e) such other information as the board may consider necessary.

(3) The board shall approve the utilization plan if it finds that the duties to be delegated to the physician's assistant are:

(a) assigned by the supervising physician;

(b) within the scope of the training, knowledge, experience, and practice of the supervisory physician; and

(c) within the scope of the training, knowledge, education, and experience of the physician's assistant.

History: En. Sec. 2, Ch. 380, L. 1981.

Cross-References

Professional service corporations, Title 35, ch. 4.

37-20-302. Utilization plan approval fee — renewal of approval — renewal fee. (1) Every physician, office, firm, or professional service corporation proposing to employ a physician's assistant shall pay to the board a utilization plan approval fee in an amount set by the board, not exceeding $50. Payment must be made when the utilization plan is submitted to the board and is not refundable.

(2) Approval of every physician's assistant utilization plan expires 1 year from the date of approval and is invalid thereafter. The department of commerce shall notify each physician, office, firm, or professional corporation and physician's assistant named in a utilization plan of the date of expiration of board approval at least 1 month prior to the expiration of approval.

(3) Renewal of approval shall be granted by the board under such circumstances as would justify original approval of a utilization plan and upon payment by the employing physician, office, firm, or professional service corporation of a renewal fee in an amount to be set by the board, not to exceed $50.

(4) Fees received by the department must be deposited in the state special revenue fund for use by the board in the administration of this chapter, subject to 37-1-101(6).

History: En. Sec. 4, Ch. 380, L. 1981; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

1981 Amendment — Transfer of Function: As enacted, subsection (2) referred to "the department of professional and occupational licensing". The code commissioner changed that reference to "the department of commerce" as required by sec. 3, Ch. 274, L. 1981.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Professional service corporations, Title 35, ch. 4.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-20-303. Exemptions from approval requirement. This chapter does not require the approval of a physician's assistant utilization plan with respect to any acts within the professional competence of a person licensed under the provisions of Title 37, chapters 3 through 17, 31, or 32.

History: En. Sec. 6, Ch. 380, L. 1981.

CHAPTER 21

DIETITIANS

Part 1 — General

Section

37-21-101. Definitions.

Part 2 — Department of Health and Environmental Sciences

37-21-201. Rules.

Part 3 — Qualifications

37-21-301. Dietitian — qualifications.
37-21-302. Registered dietitian — qualifications.

Part 4 — Remedies—Penalty

37-21-401 through 37-21-404 reserved.
37-21-405. Remedies cumulative.
37-21-406. Violation — penalty.

Part 1

General

37-21-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Authorized agency" means a private agency or institution authorized by the department to establish academic, experience, and training qualifications for dietitians.

(2) "Department" means the department of health and environmental sciences as provided in 2-15-2101.

History: En. Sec. 1, Ch. 427, L. 1983.

Part 2

Department of Health and Environmental Sciences

37-21-201. Rules. The department may adopt rules in accordance with the Montana Administrative Procedure Act to implement this chapter. The rules may adopt standards, consistent with this chapter, promulgated by an authorized agency relating to academic, experience, and training requirements.

History: En. Sec. 4, Ch. 427, L. 1983.

Cross-References

Administrative Procedure Act, Title 2, ch. 4.

Part 3

Qualifications

37-21-301. Dietitian — qualifications. No person may use, in connection with his name or place of business, the term "dietitian" or represent in any way that he is a dietitian unless he:

(1) has been granted, prior to October 1, 1983, the right to use the term "dietitian" by an authorized agency; or

(2) (a) is 18 years of age or older;

(b) has satisfactorily completed appropriate academic requirements for the field of dietetics and related disciplines;

(c) has received a baccalaureate or higher degree in dietetics or a related field from a college or university accredited by the Northwestern association of schools and colleges; and

(d) has satisfactorily completed a program of supervised clinical experience of not less than 6 months in length that is designed to train entry-level dietitians through instruction and assignments in a clinical setting. The program must meet minimum requirements established by the department.

History: En. Sec. 2, Ch. 427, L. 1983.

37-21-302. Registered dietitian — qualifications. No person may use, in connection with his name or place of business, the term "registered dietitian" or represent in any way that he is a registered dietitian unless he:

(1) has been granted, prior to October 1, 1983, the right to use the term "registered dietitian" by an authorized agency; or

(2) (a) has fulfilled all the requirements set forth in 37-21-301(2);

(b) has satisfactorily completed an examination for registered dietitians administered by an authorized agency; and

(c) has satisfactorily completed, from time to time, such continuing education requirements as may be established by an authorized agency.

History: En. Sec. 3, Ch. 427, L. 1983.

Part 4

Remedies — Penalty

37-21-401 through 37-21-404 reserved.

37-21-405. Remedies cumulative. Remedies provided under this chapter are in addition to any other civil or criminal remedy provided by law.

History: En. Sec. 6, Ch. 427, L. 1983.

37-21-406. Violation — penalty. A person who violates this chapter or rules adopted under this chapter is guilty of a misdemeanor and is punishable by a fine not to exceed $500.

History: En. Sec. 5, Ch. 427, L. 1983.

CHAPTER 22

SOCIAL WORK

Part 1 — General

Section

37-22-101. Purpose.
37-22-102. Definitions.

Part 2 — Board of Social Work Examiners

37-22-201. Duties of board.

Part 3 — Licensing

37-22-301. License requirements — exemptions.
37-22-302. Fees.
37-22-303. Issuance, effective date, and display of license.
37-22-304. Renewal of license.
37-22-305. Representation to public as licensed social worker — limitations on use of title.
37-22-306 through 37-22-310 reserved.
37-22-311. Grounds for revocation, suspension, or refusal to renew license.
37-22-312. Procedure for charging violation.

Part 4 — Regulation

37-22-401. Privileged communications — exceptions.
37-22-402 through 37-22-410 reserved.
37-22-411. Violations — penalties.

Part 1

General

37-22-101. Purpose. The legislature finds and declares that because the profession of social work profoundly affects the lives of people of this state it is the purpose of this chapter to provide for the common good by insuring ethical, qualified, and professional practice of social work. This chapter and the rules promulgated under 37-22-201 set standards of qualification, education, training, and experience and will establish professional ethics for those who seek to engage in the practice of social work as licensed social workers.

History: En. Sec. 2, Ch. 544, L. 1983.

37-22-102. Definitions. As used in this chapter:

(1) "Board" means the board of social work examiners and professional counselors established under 2-15-1854.

(2) "Department" means the department of commerce.

(3) "Licensee" means a person licensed under this chapter.

(4) "Psychotherapy" means the use of psychosocial methods within a professional relationship to assist a person to achieve a better psychosocial adaptation and to modify internal and external conditions that affect individuals, groups, or families in respect to behavior, emotions, and thinking concerning their interpersonal processes.

(5) "Social work" means the professional practice directed toward helping people achieve more adequate, satisfying, and productive social adjustments. The practice of social work involves special knowledge of social resources, human capabilities, and the roles that individual motivation and social influences play in determining behavior and involves the application of social work techniques, including:

(a) counseling and using psychotherapy with individuals, families, or groups;

(b) providing information and referral services;

(c) providing, arranging, or supervising the provision of social services;

(d) explaining and interpreting the psychosocial aspects in the situations of individuals, families, or groups;

(e) helping communities to organize to provide or improve social and health services; and

(f) research or teaching related to social work.

History: En. Sec. 3, Ch. 544, L. 1983; amd. Sec. 18, Ch. 572, L. 1985.

Compiler's Comments

1985 Amendment: In (1) after "examiners", inserted "and professional counselors".

Cross-References

Professional counseling, Title 37, ch. 23.

Part 2

Board of Social Work Examiners

37-22-201. Duties of board. The board shall:

(1) subject to 37-1-101, examine qualified applicants, issue licenses to qualified applicants that meet the requirements of this chapter, and renew licenses under the provisions of this chapter;

(2) recommend prosecutions for violations of 37-22-411 to the attorney general or the appropriate county attorney, or both;

(3) annually publish a list of the names and addresses of all persons who are licensed social workers;

(4) establish requirements for continuing education that are a condition of license renewal;

(5) meet at least once every 3 months to perform the duties described in this section. The board may, once a year by a consensus of its members, determine that there is no necessity for a board meeting.

(6) distribute a copy of the ethical standards to the certified masters of social work; and

(7) adopt rules that set professional, practice, and ethical standards for licensed masters of social work and such other rules as may be reasonably necessary for the administration of this chapter.

History: En. Sec. 4, Ch. 544, L. 1983.

Cross-References

Duties of boards, 37-1-131.

Disciplinary authority of boards — injunctions, 37-1-136.

Part 3

Licensing

37-22-301. License requirements — exemptions. (1) A license applicant shall satisfactorily complete an examination prepared and administered by the board, except that during the 365-day period following the effective date of this chapter a license must be granted without examination if the requirements of subsection (2) are met.

(2) Before an applicant may take the examination, he shall present three letters of reference from social workers, psychiatrists, psychologists, or psychiatric nurses who have knowledge of the applicant's professional performance and demonstrate to the board that he:

(a) has a doctorate or master's degree in social work from a program accredited by the council on social work education or approved by the board;

(b) has accumulated 3,000 hours of practice in psychotherapy within the past 5 years; and

(c) abides by the social work ethical standards adopted under 37-22-201.

(3) An applicant who has failed the examination may reapply to take the examination.

(4) An applicant is exempt from the examination requirement if he satisfies the board that he is licensed, certified, or registered under the laws of a state or territory of the United States that imposes substantially the same requirements as this chapter and that he has passed an examination similar to that required by the board.

History: En. Sec. 6, Ch. 544, L. 1983.

37-22-302. Fees. (1) Each applicant for a license shall, upon submitting his application to the board, pay an application fee set by the board equal to the cost of processing the application.

(2) Each applicant for a license required to take an examination shall, prior to commencement of the examination, pay an examination fee set by the board equal to the cost of administering the examination.

(3) Each applicant shall, prior to receipt of a license or license renewal, pay a fee set by the board equal to the cost of issuing a license.

(4) Subject to 37-1-101(6), money paid for application, examination, license, and license renewal fees must be deposited in the state special revenue fund for the use of the board.

History: En. Sec. 7, Ch. 544, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

Compiler's Comments

1983 Amendment: In (4), substituted "state special revenue fund" for "earmarked revenue fund".

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-22-303. Issuance, effective date, and display of license. (1) Upon successful completion of the examination required by 37-22-301 or upon demonstration by a person that he is exempt from examination and has otherwise fulfilled the requirements of 37-22-301, the applicant must be issued a license attesting to the date and fact of licensure. The license is effective on the date of issuance and expires 2 years after that date.

(2) The license must be displayed in the registrant's place of business or employment.

History: En. Sec. 8, Ch. 544, L. 1983.

37-22-304. Renewal of license. (1) An application for renewal of an existing license made within 60 days after the expiration of the license is timely, and the rights and privileges of the applicant during that period remain in effect.

(2) Application for renewal must be made upon a form provided by the department. A renewal license must be issued upon payment of a renewal fee set by the board and upon submitting proof of completion of continuing education requirements.

History: En. Sec. 9, Ch. 544, L. 1983.

37-22-305. Representation to public as licensed social worker — limitations on use of title. (1) No person may represent himself to be a licensed social worker by adding the letters "LSW" after his name or by any other means unless licensed under this chapter.

(2) Subsection (1) does not prohibit:

(a) qualified members of other professions such as physicians, psychologists, lawyers, pastoral counselors, educators, or the general public engaged in social work like activities from doing social work consistent with their training if they do not hold themselves out to the public by a title or description incorporating the words "licensed social work" or "licensed social worker";

(b) activities, services, and use of an official title by a person in the employ of a federal, state, county, or municipal agency or an educational, research, or charitable institution which are a part of the duties of the office or position;

(c) an employer from performing social work like activities performed solely for the benefit of his employees;

(d) activities and services of a student, intern, or resident in social work pursuing a course of study at an accredited university or college or working in a generally recognized training center if the activities and services constitute a part of the supervised course of study;

(e) activities and services of a person who is not a resident of this state, which services are rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year if the person is authorized under the law of the state or country of residence to perform such activities and services. However, such persons shall report to the department the nature and extent of the activities and services if they exceed 10 days in a calendar year.

(f) pending disposition of the application for a license, activities and services by a person who has recently become a resident of this state, has applied for a license within 90 days of taking up residency in this state, and is licensed to perform such activities and services in the state of his former residence.

History: En. Sec. 5, Ch. 544, L. 1983.

37-22-306 through 37-22-310 reserved.

37-22-311. Grounds for revocation, suspension, or refusal to renew license. The board may reprimand a licensee or revoke, suspend, or refuse to renew the license of a licensee found to have committed:

(1) fraud or deceit in obtaining a license or license renewal;

(2) gross negligence, incompetency, or misconduct in the practice of social work as a licensed social worker;

(3) a felony;

(4) a violation of the rules for licensed social workers adopted by the board;

(5) a misdemeanor under 37-22-411; or

(6) any of the following unprofessional acts:

(a) misrepresentation of the type or status of his license;

(b) intentionally or recklessly causing physical or emotional harm to a client;

(c) misrepresentation of his professional qualifications, affiliations, or purposes;

(d) sexual relations with a client, solicitation of sexual relations with a client, sexual misconduct, or a sex offense if such act, offense, or solicitation is substantially related to the qualifications, functions, or duties of the licensee;

(e) performance of or representation of his ability to perform professional services beyond his field or fields of competence, as established by his education, training, and experience;

(f) failure to maintain the confidentiality, except as otherwise required or permitted by law, of all information received from a client during the course of treatment and all information about the client obtained from tests or other means;

(g) prior to the commencement of treatment, failure to disclose to a client or prospective client the fee to be charged for professional services or the basis upon which such fee will be computed; or

(h) advertising in a manner that is false or misleading.

History: En. Sec. 10, Ch. 544, L. 1983.

Cross-References

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director, 37-1-121.

Disciplinary authority of boards — injunctions, 37-1-136.

37-22-312. Procedure for charging violation. (1) Any member of the board or other person may charge a licensee with a violation of 37-22-311. The charge must be made by affidavit and subscribed and sworn to by the person making it and filed with the department. The charge must be investigated by the board and, unless the board dismisses the charge after investigation as unfounded or trivial, the board must act on the charge within 6 months after the date on which the charge was filed. The board is considered to have acted on a charge if it has given notice by mail to the licensee of its intent to reprimand him or revoke, suspend, or refuse to renew his license and the notice contains those matters required by 2-4-601.

(2) Any hearing on the charge must be held before all five members of the board and must be conducted in accordance with 37-1-121(1) and the Montana Administrative Procedure Act.

History: En. Sec. 11, Ch. 544, L. 1983.

Cross-References

Administrative Procedure Act, Title 2, ch. 4.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director, 37-1-121.

Disciplinary authority of boards — injunctions, 37-1-136.

Part 4
Regulation

37-22-401. Privileged communications — exceptions. A licensee may not disclose any information he acquires from clients consulting him in his professional capacity except:

(1) with the written consent of the client or, in the case of the client's death or mental incapacity, with the written consent of the client's personal representative or guardian;

(2) that he need not treat as confidential a communication otherwise confidential that reveals the contemplation of a crime by the client or any other person or that in his professional opinion reveals a threat of imminent harm to the client or others;

(3) that if the client is a minor and information acquired by the licensee indicates that the client was the victim of a crime, the licensee may be required to testify fully in relation thereto in any investigation, trial, or other legal proceeding in which the commission of such crime is the subject of inquiry;

(4) that if the client or his personal representative or guardian brings an action against a licensee for a claim arising out of the social worker-client relationship, the client is considered to have waived any privilege;

(5) to the extent that the privilege is otherwise waived by the client; and

(6) as may otherwise be required by law.

History: En. Sec. 12, Ch. 544, L. 1983.

37-22-402 through 37-22-410 reserved.

37-22-411. Violations — penalties. (1) It is a misdemeanor for a person to:

(a) represent himself as a licensed social worker without being licensed under this chapter;

(b) obtain or attempt to obtain a license or license renewal by bribery or fraudulent representation; or

(c) knowingly make a false statement on any form used by the board to implement this chapter or the rules adopted under this chapter.

(2) A person convicted under this section shall be imprisoned in the county jail for a period not exceeding 6 months or fined not more than $500, or both. A person convicted of a second offense under this section shall be punished by both such fine and imprisonment.

History: **En. Sec. 13, Ch. 544, L. 1983.**

CHAPTER 23

PROFESSIONAL COUNSELING

Part 1 — General

Section

37-23-101. Purpose.
37-23-102. Definitions.
37-23-103. Powers and duties of board.

Part 2 — Licensing

37-23-201. Representation as licensed professional counselor — license required.
37-23-202. Licensure requirements.
37-23-203. Issuance, effective date, and display of license.
37-23-204. Reciprocity.
37-23-205. Renewal of license.
37-23-206. Fees.
37-23-207 through 37-23-210 reserved.
37-23-211. Suspension or revocation of license.
37-23-212. Procedure for charging violation of professional or ethical standard.

Part 3 — Regulation—Penalties

37-23-301. Privileged communications — exceptions.
37-23-302 through 37-23-310 reserved.
37-23-311. Misdemeanor violations — penalties.

Chapter Cross-References

Health service corporation coverage for professional counseling services, 33-30-1012.

Part 1

General

37-23-101. Purpose. The legislature finds and declares that because the profession of professional counseling profoundly affects the lives of people of this state, it is the purpose of this chapter to provide for the common good by ensuring ethical, qualified, and professional practice of professional counseling. This chapter and the rules promulgated under 37-23-103 set standards of qualification, education, training, and experience and establish professional ethics for those who seek to engage in the practice of professional counseling as licensed professional counselors.

History: **En. Sec. 1, Ch. 572, L. 1985.**

37-23-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of social work examiners and professional counselors established under 2-15-1854.

(2) "Licensee" means a person licensed under this chapter.

(3) "Professional counseling" means engaging in methods and techniques that include:

(a) counseling, which means assisting an individual or a group, through the counseling relationship, to develop understanding of intrapersonal and interpersonal problems, to define goals, to make decisions, to plan a course of action reflecting his or their needs, interests, and abilities, and to use informational and community resources;

(b) appraisal, which means selecting, administering, scoring, and interpreting instruments designed to assess an individual's aptitudes, attitudes, abilities, achievement, interests, and personal characteristics and using nonstandardized methods and techniques for understanding human behavior in relation to coping with, adapting to, or changing life situations;

(c) technical assistance, which means applying scientific principles and procedures in counseling, guidance, and human development to provide assistance in understanding and solving a current or potential problem that an individual may have in relation to another individual, a group or organization, or other third party; and

(d) referral, which means evaluating information to identify needs or problems of an individual and to determine the advisability of referral to other specialists, informing the individual of such judgment, and communicating as requested or considered appropriate with such referral sources.

History: **En. Sec. 2, Ch. 572, L. 1985.**

37-23-103. Powers and duties of board. (1) The board shall:

(a) recommend amendments to this chapter to the governor or the legislature, or both;

(b) recommend prosecutions for violations of 37-23-311 to the attorney general or appropriate county attorneys, or both;

(c) annually publish a list of the names and addresses of all persons who are licensed professional counselors;

(d) establish requirements for continuing education that are conditions of license renewal;

(e) meet to perform the duties described in this section;

(f) adopt rules that set professional and ethical standards for licensed professional counselors which are based on national standards and such other rules as may be reasonably necessary for the administration of this chapter; and

(g) distribute a copy of the professional and ethical standards to each licensed professional counselor.

(2) The board may adopt rules governing the issuance of certificates of special competence in particular areas of practice as a licensed professional

counselor. The board shall establish criteria for each particular area for which a certificate is issued.

History: **En. Sec. 3, Ch. 572, L. 1985.**

Part 2

Licensing

37-23-201. Representation as licensed professional counselor — license required. (1) No person may represent himself to be a licensed professional counselor by adding the letters "LPC" after his name or by any other means unless licensed under this chapter; and

(2) Subsection (1) does not prohibit:

(a) a qualified member of another profession, such as a physician, psychologist, lawyer, pastoral counselor, probation officer, court employee, nurse, social worker, school counselor, or educator, from professional counseling consistent with his training if he does not hold himself out to the public by a title or description incorporating the words "licensed professional counselor", "licensed counselor", or "professional counselor";

(b) an activity or service or use of an official title by a person employed by a federal, state, county, or municipal agency or an educational, research, or charitable institution that is a part of the duties of the office or position;

(c) an activity or service of an employee of a business establishment performed solely for the benefit of the establishment's employees;

(d) an activity or service of a student, intern, or resident in mental health counseling pursuing a course of study at an accredited university or college or working in a generally recognized training center if the activity or service constitutes a part of the supervised course of study;

(e) an activity or service of a person who is not a resident of this state, which activity or service is rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year, if the person is authorized under the law of the state or country of residence to perform such activity or service. However, such person shall report to the department of commerce the nature and extent of the activity or service if it exceeds 10 days in a calendar year.

(f) pending disposition of the application for a license, the activity or service by a person who has recently become a resident of this state, has applied for a license within 90 days of taking up residency in this state, and is licensed to perform such activity or service in the state of his former residence.

History: **En. Sec. 4, Ch. 572, L. 1985.**

37-23-202. Licensure requirements. (1) To be licensed on or before December 31, 1987, as a professional counselor under this chapter, an applicant must have satisfactorily completed:

(a) a planned graduate program of study that was primarily counseling in nature which resulted in an advanced degree in a counseling field from an institution accredited to offer such a degree program;

(b) 2,000 hours or more of postdegree work experience as a counselor in a hospital, school, agency, or other supervised setting;

(c) and passed an examination prepared and administered by the board based on a national examination approved by the board; and

(d) an application form and process prescribed by the board that includes submission of three letters of nomination from counselors or related professionals, each of whom holds a master's degree or higher and who can attest to the quality of the applicant's work.

(2) To be licensed after December 31, 1987, an applicant must have satisfactorily completed:

(a) a planned graduate program of 90 quarter hours, primarily counseling in nature, nine quarter hours of which were earned in an advanced counseling practicum, which resulted in a graduate degree from an institution accredited to offer a graduate program in counseling;

(b) 2,000 hours of counseling practice supervised by a licensed professional counselor or licensed member of an allied mental health profession, at least half of which was postdegree. The applicant must have each supervisor endorse his application for licensure, attesting to the number of hours supervised.

(c) and passed an examination prepared and administered by the board based on a national examination approved by the board; and

(d) an application form and process prescribed by the board.

History: En. Sec. 5, Ch. 572, L. 1985.

37-23-203. Issuance, effective date, and display of license. (1) If an applicant meets the requirements contained in 37-23-202 and has paid the appropriate fees, the board shall issue a license to the applicant attesting to the date and fact of licensure. The license is effective on the date of issuance and must be renewed every year as provided in 37-23-205.

(2) The license must be displayed in the registrant's place of business or employment.

History: En. Sec. 7, Ch. 572, L. 1985.

37-23-204. Reciprocity. Upon payment of the license fee provided for in 37-23-206, the board may issue a license to a person who, at the time of application, is licensed or certified as a professional counselor by an agency located in another state if the requirements of such licensure or certification are substantially similar to the requirements of this chapter.

History: En. Sec. 8, Ch. 572, L. 1985.

37-23-205. Renewal of license. (1) A license may be issued for no longer than 1 year. The board may adopt rules to provide for annual renewal of an existing license.

(2) An application for renewal of an existing license made within 60 days after the expiration of the license is timely, and the rights and privileges of the applicant during that period remain in effect.

(3) Application for renewal must be made upon a form provided by the department. A renewal license must be issued upon payment of a renewal fee set by the board and upon submitting proof of completion of continuing education requirements established by the board.

History: En. Sec. 9, Ch. 572, L. 1985.

37-23-206. Fees. (1) Each applicant for a license shall, upon submitting his application to the board, pay an application fee set by the board commensurate with costs.

(2) Each applicant for a license required to take an examination shall, before commencement of the examination, pay an examination fee set by the board commensurate with costs.

(3) Each applicant shall, before receipt of a license or license renewal, pay a fee set by the board commensurate with costs.

(4) Subject to 37-1-101(6), money paid for application, examination, license, and license renewal fees must be deposited in the state special revenue fund for the use of the board.

History: En. Sec. 6, Ch. 572, L. 1985.

37-23-207 through 37-23-210 reserved.

37-23-211. Suspension or revocation of license. (1) The board may suspend or revoke the license of a person found according to the procedure contained in 37-23-212 to have violated a professional or ethical standard adopted by the board. A person may not practice counseling in this state as a licensed professional counselor during the period for which his license is suspended or revoked.

(2) The board may not suspend a license for more than 6 months. Upon termination of the suspension period, the person whose license has been suspended must undergo a board review before resuming practice as a licensed professional counselor.

(3) The board may not revoke a license for less than 3 years. Upon termination of the revocation period, the person whose license has been revoked may apply to the board for reinstatement.

History: En. Sec. 10, Ch. 572, L. 1985.

37-23-212. Procedure for charging violation of professional or ethical standard. (1) A member of the board or any other person may charge a licensee with violating a professional or ethical standard adopted by the board. The charge must be made by affidavit, subscribed and sworn to by the person making it, and filed with the department of commerce. The charge must be investigated by the board, and unless the board dismisses the charge after investigation as unfounded or trivial, the board must act on the charge within 6 months after the date on which the charge was filed. The board is considered to have acted on a charge if it has given notice by mail to the licensee of its intent to suspend or revoke his license and the notice contains those matters required by 2-4-601.

(2) A hearing on the charge must be conducted in accordance with 37-1-121(1) and the Montana Administrative Procedure Act.

History: En. Sec. 11, Ch. 572, L. 1985.

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

Part 3

Regulation — Penalties

37-23-301. Privileged communications — exceptions. A licensee may not disclose any information he acquires from clients consulting him in his professional capacity except:

(1) with the written consent of the client or, in the case of the client's death or mental incapacity, with the written consent of the client's personal representative or guardian;

(2) that he need not treat as confidential a communication otherwise confidential that reveals the contemplation of a crime by the client or any other person or that in his professional opinion reveals a threat of imminent harm to the client or others;

(3) that if the client is a minor and information acquired by the licensee indicates that the client was the victim of a crime, the licensee may be required to testify fully in relation thereto in any investigation, trial, or other legal proceeding in which the commission of such crime is the subject of inquiry;

(4) that if the client or his personal representative or guardian brings an action against a licensee for a claim arising out of the counselor-client relationship, the client is considered to have waived any privilege;

(5) to the extent that the privilege is otherwise waived by the client; and

(6) as may otherwise be required by law.

History: **En. Sec. 12, Ch. 572, L. 1985.**

37-23-302 through 37-23-310 reserved.

37-23-311. Misdemeanor violations — penalties. (1) It is a misdemeanor for a person to knowingly:

(a) represent himself as a licensed professional counselor without being licensed under this chapter;

(b) obtain or attempt to obtain a license or license renewal by bribery or fraudulent representation; or

(c) make a false statement on any form used by the board to implement this chapter or the rules adopted under this chapter.

(2) A person convicted under this section shall be imprisoned in the county jail for a period not exceeding 6 months or fined not more than $500, or both. A person convicted of any subsequent offense under this section shall be punished by both such fine and imprisonment.

History: **En. Sec. 13, Ch. 572, L. 1985.**

CHAPTER 24

OCCUPATIONAL THERAPY

Part 1 — General Provisions

Section

37-24-101. Short title.
37-24-102. Purpose.
37-24-103. Definitions.
37-24-104. Exemptions.

Part 2 — Board of Occupational Therapy Practice

37-24-201. Organization — general rulemaking power — quorum.
37-24-202. Powers and duties of board.
37-24-203. Compensation and expenses.

Part 3 — Licensing

37-24-301. License required.
37-24-302. Application.
37-24-303. Requirements for licensure.
37-24-304. Examination.
37-24-305. Waiver of requirements for licensure.
37-24-306. Issuance of license.
37-24-307. Limited permit.
37-24-308. Renewal of license — inactive status.
37-24-309. Denial, suspension, or revocation of license.
37-24-310. Fees.
37-24-311. Penalty.

Part 1

General Provisions

37-24-101. Short title. This chapter may be cited as the "Occupational Therapy Practice Act".

History: **En. Sec. 1, Ch. 629, L. 1985.**

37-24-102. Purpose. The legislature declares that it is the purpose of this chapter to provide for the regulation of persons offering occupational therapy services in order to:

(1) safeguard the public health, safety, and welfare;

(2) protect the public from incompetent, unscrupulous, and unauthorized persons;

(3) assure the highest degree of professional conduct on the part of occupational therapists and occupational therapy assistants; and

(4) assure the availability of occupational therapy services of high quality to persons in need of such services.

History: **En. Sec. 2, Ch. 629, L. 1985.**

37-24-103. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of occupational therapy practice established by 2-15-1859.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Occupational therapist" means a person licensed to practice occupational therapy under this chapter.

(4) "Occupational therapy" means the use of purposeful activity with an individual who is limited by physical injury or illness, psychosocial dysfunction, developmental or learning disability, or the aging process in order to maximize independence, prevent disability, and maintain health. The practice encompasses evaluation, treatment, and consultation. Occupational therapy services may be provided individually, in groups, or through social systems. Specific occupational therapy services include but are not limited to:

(a) teaching daily living skills;

(b) developing perceptual-motor skills and sensory integrative functioning;

(c) developing play skills and prevocational and leisure capacities;

(d) designing, fabricating, or applying splints or selective adaptive equipment and training in the use of upper extremity prosthetics or upper extremity orthotic devices;

(e) using specifically designed crafts and exercises to enhance functional performance;

(f) administering and interpreting tests such as manual muscle and range of motion; and

(g) adapting environments for the handicapped.

(5) "Occupational therapy aide" means a person who assists in the practice of occupational therapy under the direct supervision of an occupational therapist or occupational therapy assistant and whose activities require an understanding of occupational therapy but do not require professional or advanced training in the basic anatomical, biological, psychological, and social sciences involved in the practice of occupational therapy.

(6) "Occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under this chapter, who works under the general supervision of an occupational therapist in accordance with the provisions of the Essentials for an Approved Educational Program for the Occupational Therapy Assistant, published by the American occupational therapy association, as it read on October 1, 1985.

History: **En. Sec. 3, Ch. 629, L. 1985.**

37-24-104. Exemptions. Nothing in this chapter prevents or restricts the practice, services, or activities of:

(1) a person licensed in this state under any other law or certified or registered as a member of an occupational or professional group other than occupational therapy from engaging in the profession or occupation for which he is licensed, certified, or registered;

(2) a person who provides treatment, teaches living skills, designs orthotic or prosthetic devices, administers tests, or engages in other activities described in 37-24-103 but does not represent himself as an occupational therapist;

(3) a person employed as an occupational therapist or occupational therapy assistant by an institution or agency of the federal government;

(4) a person pursuing a supervised course of study leading to a degree or certificate in occupational therapy at an accredited institution or under an approved educational program if the person is designated by a title that clearly indicates his status as a student or trainee;

(5) a person fulfilling the supervised fieldwork experience requirements of 37-24-303 if the experience constitutes a part of the experience necessary to meet the requirements of that section;

(6) a person performing occupational therapy services in the state if these services are performed for no more than 10 days in a calendar year in association with an occupational therapist licensed under this chapter, provided that:

(a) the person is licensed under the law of another state that has licensure requirements at least as stringent as the requirements of this chapter; or

(b) the person meets the requirements for certification as an occupational therapist registered (OTR) or a certified occupational therapy assistant (COTA), established by the American occupational therapy association; or

(7) a person employed as an occupational therapy aide.

History: En. Sec. 4, Ch. 629, L. 1985.

Part 2

Board of Occupational Therapy Practice

37-24-201. Organization — general rulemaking power — quorum. (1) The board of occupational therapy practice shall meet annually and elect a chairman and a secretary from its members. The board shall hold other meetings when necessary to transact its business.

(2) The board may adopt rules for the conduct of its affairs and the administration of this chapter. Rules adopted by the board may include such rules as are reasonable or necessary for the proper performance of its duties and the regulation of proceedings before it.

(3) Three board members constitute a quorum for the transaction of business.

History: En. Sec. 6, Ch. 629, L. 1985.

37-24-202. Powers and duties of board. (1) The board shall:

(a) administer, coordinate, and enforce the provisions of this chapter;

(b) evaluate the qualifications of applicants for licensure under this chapter and approve and supervise the examination of such applicants;

(c) investigate persons engaging in practices that allegedly violate the provisions of this chapter;

(d) adopt rules relating to professional licensure and the establishment of ethical standards of practice under this chapter;

(e) conduct hearings and keep records and minutes as the board considers necessary to carry out its functions; and

(f) adopt a seal by which the board shall authenticate its proceedings.

(2) A copy of the proceedings, records, or acts of the board, signed by the chairman or secretary of the board and stamped with the seal, is prima facie evidence of the validity of such document.

(3) The department may employ persons it considers necessary to carry out the provisions of this chapter.

History: En. Sec. 7, Ch. 629, L. 1985.

37-24-203. Compensation and expenses. Each board member is entitled to compensation and travel expenses as provided in 37-1-133.

History: En. Sec. 8, Ch. 629, L. 1985.

Part 3

Licensing

37-24-301. License required. (1) (a) No person may hold himself out as an occupational therapist or as being able to practice occupational therapy or able to render occupational therapy services in this state unless he is licensed as an occupational therapist under the provisions of this chapter.

(b) No person may practice or hold himself out as an occupational therapy assistant in this state unless he is licensed as an occupational therapist or as an occupational therapy assistant.

(2) Only an individual may be licensed under this chapter.

History: **En. Sec. 9, Ch. 629, L. 1985.**

Compiler's Comments

Grandfather Provisions: Section 20, Ch. 629, L. 1985, provided: "The board shall grant a license to any person certified as an occupational therapist registered (OTR) or a certified occupational therapy assistant (COTA) by the American occupational therapy association (AOTA) prior to October 1, 1985."

37-24-302. Application. An applicant applying for licensure as an occupational therapist or as an occupational therapy assistant shall file a written application on forms prescribed by the board, showing that the applicant meets the requirements of 37-24-303(1)(a) and (1)(b).

History: **En. Sec. 10, Ch. 629, L. 1985.**

37-24-303. Requirements for licensure. (1) To be eligible for licensure by the board as an occupational therapist or an occupational therapy assistant, the applicant shall:

(a) present evidence of having successfully completed the academic requirements of an educational program recognized by the board for the license sought;

(b) submit evidence of having successfully completed a period of supervised fieldwork experience arranged by the recognized educational institution where he completed the academic requirements or by a nationally recognized professional association; and

(c) pass an examination as provided for in 37-24-304.

(2) The supervised fieldwork experience requirement for an occupational therapist is a minimum of 6 months. The supervised fieldwork experience requirement for an occupational therapy assistant is a minimum of 2 months.

History: **En. Sec. 11, Ch. 629, L. 1985.**

37-24-304. Examination. (1) A person who satisfies the educational and experience requirements of 37-24-303 may apply for examination in the manner prescribed by the board. The application must be accompanied by the nonrefundable fee prescribed by the board under 37-24-310. An unsuccessful examinee may apply for reexamination upon payment of the prescribed fee.

(2) The board shall adopt a written examination for occupational therapists and a written examination for occupational therapy assistants and establish standards for acceptable performance.

(3) Examinations shall be given at least twice each year at a time and place and under such supervision as the board may determine. The board shall give notice of the examinations in accordance with rules adopted by the board.

(4) Examinees may obtain their scores and review their examinations in accordance with rules established by the board.

History: **En. Sec. 12, Ch. 629, L. 1985.**

37-24-305. Waiver of requirements for licensure. (1) The board may waive the examination, education, or experience requirements and grant a license to an applicant who presents proof of current licensure as an occupational therapist or occupational therapy assistant in another state, the District of Columbia, or a territory of the United States which requires standards for licensure that the board considers equivalent to the requirements for licensure under this chapter.

(2) The board may waive the examination, education, or experience requirements and grant a license to a person certified by the American occupational therapy association (AOTA) as a certified occupational therapy assistant (COTA) or an occupational therapist registered (OTR) after October 1, 1985, if the board determines that the requirements for such certification are equivalent to the requirements for licensure under this chapter.

(3) Occupational therapists and occupational therapy assistants trained in a foreign country must satisfy the examination requirements of 37-24-304. The board shall require foreign-trained applicants, before examination, to furnish proof of educational and supervised fieldwork requirements substantially equal to those required by 37-24-303.

(4) The board may waive the educational requirements and license an applicant as an occupational therapist if the applicant has practiced as an occupational therapy assistant for 4 years, has completed the experience requirement before January 1, 1988, and has passed the examination for occupational therapists.

History: En. Sec. 13, Ch. 629, L. 1985.

37-24-306. Issuance of license. (1) The board shall issue a license to any person who meets the requirements of this chapter upon payment of the prescribed license fee.

(2) The license must include the dates of issuance and expiration.

History: En. Sec. 14, Ch. 629, L. 1985.

37-24-307. Limited permit. A limited permit may be granted to a person who has completed the education and experience requirements of this chapter. The permit allows the person to practice occupational therapy in association with a licensed occupational therapist. This permit is valid until the person is issued a license under 37-24-306 or until the results of the examination taken by the person are available to the board. This limited permit may be renewed only one time if the person has failed the examination.

History: En. Sec. 15, Ch. 629, L. 1985.

37-24-308. Renewal of license — inactive status. (1) Each license issued under this chapter is subject to annual renewal upon the payment of a renewal fee and expires unless renewed in the manner prescribed by the rules of the board. The board may provide for the late renewal of a license upon the payment of a late fee in accordance with its rules, but no late renewal of a license may be granted more than 5 years after its expiration.

(2) Upon request, the board may grant inactive status to a licensee who:

(a) does not practice as an occupational therapist or an occupational therapy assistant; and

(b) does not hold himself out as an occupational therapist or an occupational therapy assistant.

History: En. Sec. 16, Ch. 629, L. 1985.

37-24-309. Denial, suspension, or revocation of license. (1) The board may refuse to issue or renew a license or may revoke or suspend the license of any licensee or applicant if he has:

(a) obtained a license by means of fraud, misrepresentation, or concealment of material facts;

(b) violated ethical standards of practice established pursuant to this chapter;

(c) been convicted of a crime considered sufficient under 37-1-203 to warrant denial, revocation, or suspension of the license;

(d) violated any lawful order or rule of the board; or

(e) violated any provision of this chapter.

(2) Denial, suspension, or revocation of a license is permissible only after a hearing and procedures that comply with all applicable requirements of the Montana Administrative Procedure Act.

(3) One year after the denial, suspension, or revocation of a license, a person may apply for reinstatement and licensure. The board may in its discretion require an examination for reinstatement.

History: En. Sec. 17, Ch. 629, L. 1985.

37-24-310. Fees. (1) The board may adopt fees in accordance with 37-1-134 for:

(a) applications for licensure;

(b) examination;

(c) initial license issuance;

(d) license renewal;

(e) late license renewal; and

(f) limited permit issuance.

(2) All fees collected by the board under this section must be deposited in the state special revenue fund for the use of the board in administering this act, subject to 37-1-101(6).

History: En. Sec. 18, Ch. 629, L. 1985.

37-24-311. Penalty. A person convicted of violating this chapter is guilty of a misdemeanor and shall be fined an amount not to exceed $500.

History: En. Sec. 19, Ch. 629, L. 1985.

CHAPTERS 25 THROUGH 28

RESERVED

CHAPTER 29

DENTURITRY

Part 1 — General

Section

37-29-101. Short title.
37-29-102. Definitions.
37-29-103. Association with dentists permitted.

37-29-104. Health insurance policies to include denturist services.
37-29-105. Applicability of other law.

Part 2 — Board of Denturitry

37-29-201. Board powers and duties.
37-29-202. Officers — meetings — voting — records.
37-29-203. Compensation and expenses of board members — deposit of funds.

Part 3 — Licensing

37-29-301. License to practice required.
37-29-302. Exceptions.
37-29-303. Application for license.
37-29-304. Applications and fees.
37-29-305. Examinations.
37-29-306. Licensing.
37-29-307 through 37-29-310 reserved.
37-29-311. Suspension or revocation of license.
37-29-312. Revocation of license stays eligibility.
37-29-313. Renewal or reinstatement of license.
37-29-314 through 37-29-320 reserved.
37-29-321. Judicial review of board action.

Part 4 — Regulation

37-29-401. Standards of conduct and practice.
37-29-402. Prohibitions.
37-29-403. Procedure for making and fitting partial denture.
37-29-404. Notice of board address — guarantee.
37-29-405. Advertising restrictions.
37-29-406 through 37-29-410 reserved.
37-29-411. Injunction.
37-29-412. Violation and penalty.

Part 1

General

37-29-101. Short title. This chapter may be cited as the "Freedom of Choice in Denture Services Act of 1984".

History: En. Sec. 1, I.M. No. 97, approved Nov. 6, 1984.

37-29-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the state board of denturitry provided for in 2-15-1855.

(2) "Denture" means any removable full or partial upper or lower prosthetic dental appliance to be worn in the mouth.

(3) "Denturist" means a person licensed under this chapter to engage in the practice of denturitry.

(4) "Department" means department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Immediate denture" means a denture constructed prior to and inserted immediately after extraction of teeth.

(6) "Practice of denturitry" means:

(a) the making, fitting, constructing, altering, reproducing, or repairing of a denture and furnishing or supplying of a denture directly to a person or advising the use of a denture; or

(b) the taking or making or the giving of advice, assistance, or facilities respecting the taking or making of any impression, bite, cast, or design preparatory to or for the purpose of making, constructing, fitting, furnishing, supplying, altering, repairing, or reproducing a denture.

History: **En. Sec. 2, I.M. No. 97, approved Nov. 6, 1984.**

37-29-103. Association with dentists permitted. A licensed denturist may enter into any lawful agreement with a dentist regarding fees, compensation, and business association.

History: **En. Sec. 19, I.M. No. 97, approved Nov. 6, 1984.**

37-29-104. Health insurance policies to include denturist services. Notwithstanding any provision of any policy of insurance covering health, whenever such policy provides for reimbursement for any service that is within the lawful scope of practice of a denturist, the insured under such policy is entitled to reimbursement for such service, whether the service is performed by a licensed dentist or a licensed denturist.

History: **En. Sec. 18, I.M. No. 97, approved Nov. 6, 1984.**

37-29-105. Applicability of other law. To the extent that they do not conflict with the provisions of this chapter, the provisions of chapter 1 of this title and Title 2, chapters 4 and 15, apply to the powers and duties of the department and the board.

History: **En. Sec. 12, Ch. 548, L. 1985.**

Part 2

Board of Denturitry

37-29-201. Board powers and duties. The board has the following powers and duties:

(1) determination of the qualifications of applicants for licensure under this chapter;

(2) administration of examinations for licensure under this chapter;

(3) collection of fees and charges prescribed in this chapter;

(4) issuance, suspension, and revocation of licenses for the practice of denturitry under the conditions prescribed in this chapter; and

(5) to adopt, amend, and repeal rules necessary for the implementation, continuation, and enforcement of this chapter, including but not limited to license applications, form and display of licenses, license examination format, criteria and grading of examinations, disciplinary standards for licensees, inspection of denturitry premises and facilities, and investigation of complaints.

History: **En. Sec. 10, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 4, Ch. 548, L. 1985.**

Compiler's Comments

1985 Amendment: In (2) after "examinations", deleted "and determination of a passing grade"; and inserted (5).

37-29-202. Officers — meetings — voting — records. (1) The board shall elect a president, secretary, and treasurer. The offices of secretary and treasurer may be held by the same person. Officers of the board are elected for terms of 1 year at the annual meeting of the board. The same person may not hold the office of president for more than 3 years in succession.

(2) The board must hold meetings at least twice a year to conduct business and perform duties. The board may meet at such times as designated by the president or by request of two or more members of the board. Meetings must be held in the offices of the board. Dates and places may be changed through notification by the board at least 10 days prior to the regular meeting date or the date established for a meeting, whichever is earlier.

(3) A majority of the board constitutes a quorum for all purposes, and the majority vote of the members voting constitutes the action of the board.

(4) The secretary of the board must keep a complete record of all of its proceedings.

History: En. Sec. 8, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 2, Ch. 548, L. 1985.

Compiler's Comments

1985 Amendment: In (2) in first sentence, after "meetings", substituted "at least twice a year" for "on the second Friday of December and the second Friday of May"; in (2) in second sentence, before "times", deleted "other"; and deleted former (5) that read: "The board shall appoint a fair practice committee consisting of three denturists selected from the membership of the association of Montana denturists. This committee may meet as need arises and must file a written report with the board containing its recommendations."

37-29-203. Compensation and expenses of board members — deposit of funds. (1) Out of the funds derived from fees collected under this chapter, each member of the board must receive compensation and travel expenses as provided for in 37-1-133, with the exception that denturist members of the board may receive compensation for expenses only.

(2) Money collected by the department under this chapter must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 9, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 3, Ch. 548, L. 1985.

Compiler's Comments

1985 Amendment: In (2) substituted present language for "Money collected in excess of expenses and salaries must be held by the department as a special fund for meeting the expenses of the board, the proper administration of (this act), and educational purposes approved by the board"; and deleted former (3) that read: "The department is not obligated to pay claims which, in aggregate with claims already paid exceed the income to the department which has been derived by the application of (this act)."

Part 3

Licensing

37-29-301. License to practice required. (1) After April 1, 1985, a person must hold a license for the practice of denturitry in order to perform the following acts:

(a) engaging or offering to engage in the practice of denturitry; or

(b) use in connection with his name the word or letters "denturist", "L.D.", or any other words, letters, abbreviations, or insignia implying that such person is engaged in the practice of denturitry.

(2) The practice of denturitry within the context of this chapter requires that all work except cast frame work be performed at the address shown on the denturist's license.

History: **En. Sec. 3, I.M. No. 97, approved Nov. 6, 1984.**

37-29-302. Exceptions. The provisions of this chapter do not apply to:

(1) a person interning under the direct supervision of a licensed denturist as required by 37-29-303(2), provided that no denturist may supervise more than one such person at any one time;

(2) the practice of dentistry or medicine by persons authorized to do so by the state of Montana; or

(3) a student of denturitry in pursuit of clinical studies under a school program or internship as required by 37-29-303(2).

History: **En. Sec. 4, I.M. No. 97, approved Nov. 6, 1984.**

37-29-303. Application for license. Upon application and payment of the appropriate fee, the board shall issue a license to practice denturitry to any applicant who meets one of the following criteria and scores a passing grade on the examination for licensure:

(1) (a) Applications for persons engaged in the practice of denturitry on December 1, 1984, must be filed prior to April 1, 1985, and must include the following:

(i) three signed affidavits by persons other than family members that the applicant has been employed in denture technology for at least 5 years prior to application, is able to demonstrate competency in intraoral procedures, and has been a resident of the state of Montana for at least 6 months prior to April 1, 1985; and

(ii) documentation that the applicant has successfully completed courses approved by the board in head and oral anatomy and physiology, oral pathology, partial denture construction and design, clinical dental technology, radiology, dental laboratory technology, asepsis, clinical jurisprudence, medical emergencies, and cardiopulmonary resuscitation.

(b) Subsection (1)(a) must be applied retroactively to permit qualification of license applicants initially qualified and applying prior to the appointment and qualification of the original board under this chapter and section 27 of I.M. No. 97.

(2) Applications filed on or after April 1, 1985, must include:

(a) documentation that the applicant has completed formal training of not less than 2 years at an educational institution accredited by a national or regional accrediting agency recognized by the Montana state board of regents, the curriculum of which includes courses in head and oral anatomy and physiology, oral pathology, microbiology, partial denture construction and design, clinical dental technology, radiology, dental laboratory technology, asepsis, clinical jurisprudence, and medical emergencies, including cardiopulmonary resuscitation; and

(b) documentation that the applicant:

(i) has completed 2 years of internship under the direct supervision of a licensed denturist; or

(ii) has 3 years of experience as a denturist under licensure in another state or Canada.

(3) A denturist who has been lawfully licensed or certified by initial licensing provisions in any state or territory that maintains a standard of denturitry which is equal to that of Montana must submit a certificate from the examining body of the state or territory in which he is certified or licensed, attesting to 5 years' practice under the certificate of license. However, no applicant may be licensed under the provisions of this subsection unless the state or territory in which he is licensed or certified extends a like privilege to denturists licensed by the state of Montana to practice denturitry. The board may enter into reciprocal relations with those states or territories whose laws are compatible with this chapter.

History: En. Sec. 11, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 5, Ch. 548, L. 1985.

Compiler's Comments

1985 Amendment: Renumbered former (1)(a) and (1)(b) as (1)(a)(i) and (1)(a)(ii); inserted (1)(b); and in (3) in last sentence, before "states", deleted "boards in".

Initiative Internal Reference: The reference in subsection (1)(b) to sec. 27 of Initiative Measure No. 97 has been left in that form because sec. 27, I.M. No. 97, was not codified. It provided for appointment to the initial board of denturitry and for the terms of office of initial board members. The initial board was confirmed by the Senate on April 9, 1985. (Sec. 10, Ch. 548, L. 1985, amended sec. 27, I.M. No. 97. For text, see Ch. 548, L. 1985.)

37-29-304. Applications and fees. (1) The board is initially entitled to charge and collect the following fees:

(a) $200 application for licensing;

(b) $200 for original license;

(c) $200 annual license renewal fee;

(d) $200 for examination or reexamination, provided that if on reexamination only the written examination is required, the fee is $100; and

(e) $50 for a duplicate or replacement license or a license for a second address, provided that no denturist may hold licenses bearing more than two different addresses.

(2) The board may set other fees and modify the initial fees in accordance with the provisions of 37-1-134.

History: En. Sec. 13, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 6, Ch. 548, L. 1985.

Compiler's Comments

1985 Amendment: Renumbered former (1) through (5) as (1)(a) through (1)(e); in (1) inserted "initially" before "entitled"; and inserted (2).

37-29-305. Examinations. The board shall administer the examinations for licensure, subject to the following requirements:

(1) Examinations must be of such character as to determine the qualifications, fitness, and ability of the applicant to practice denturitry. The form of the test must include written and oral examinations and a practical demonstration of skills.

(2) Examinations must be held at least annually on the second Monday in July. An applicant must obtain an average percentage score of 75% or better to qualify for licensure. The written and practical examinations shall carry equal weight. The oral examination results may adjust an average score only two percentage points.

(3) The written examination must include coverage of the following subjects:

(a) head and oral anatomy and physiology;

(b) oral pathology;
(c) partial denture construction and design;
(d) microbiology;
(e) radiology;
(f) clinical dental technology;
(g) dental laboratory technology;
(h) asepsis;
(i) clinical jurisprudence;
(j) medical emergencies.

(4) Applicants who fail to score a 75% average on the written and practical examinations may, upon payment of the appropriate fee, have a second opportunity to take the written or practical examinations, or both, provided that all applicants under 37-29-303(1) are examined on or before April 1, 1985.

History: En. Sec. 12, I.M. No. 97, approved Nov. 6, 1984.

37-29-306. Licensing. (1) After March 1, 1985, a denturist license is valid for a period of 1 year. A renewal license must be issued upon payment of the renewal fee and the submission of proof of the completion of not less than 12 hours of continuing education, which may include programs sponsored by an educational institution, state denturist board, or a recognized denturist organization. Subject matter must be pertinent to denturitry as enumerated in 37-29-305(3). Requests for approval of continuing education programs must be made to the board, providing sufficient outline of the program on which the board may base its determination. Hours pertain to clock hours actually attended by the licensee. In addition, the denturist shall submit proof that he holds a current cardiopulmonary resuscitation card. A license issued effective as of a date other than March 1 will be valid until midnight February 28 next following the date it was issued. The license shall bear on its face the address where the licensee's denturist services will be performed.

(2) Applications must be submitted on forms approved by the board and furnished by the department. Each application must include all other documentations necessary to establish that the applicant meets the requirements for licensure and is eligible to take the licensure examination. Applications must be accompanied by the appropriate fees.

(3) After April 1, 1985, the board may by rule alter future renewal dates for licenses under this chapter.

History: En. Sec. 14, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 7, Ch. 548, L. 1985.

Compiler's Comments

1985 Amendment: In (1) at beginning inserted "After March 1, 1985"; in (2), deleted former irst sentence that read: "Licensure applications must be received by the department on or before April 1 preceding the July examination" and deleted former last sentence that read: "Applications received after April 1 will be held over for examination the following year"; and inserted (3).

37-29-307 through 37-29-310 reserved.

37-29-311. Suspension or revocation of license. (1) The board has he power to refuse to issue a license, to suspend or revoke a license or to place a licensed person on probation for a period specified by the board, or o reprimand or censure a licensee for any of the following causes:

(a) conviction of a crime if that crime bears a demonstrable relationship to the practice of denturitry;

(b) incompetence or gross negligence in the practice of denturitry;

(c) fraud or misrepresentation in the practice of denturitry;

(d) the use of any narcotic or dangerous drug or intoxicating liquor to an extent that such use impairs the ability to conduct safely the practice of denturitry;

(e) the willful violation of any provision of this chapter; or

(f) unprofessional conduct as defined by rule of the board.

(2) The board or its agents may examine and inspect the place of business of any denturist at any time during business hours or upon at least 72 hours' notice made by U.S. mail to the address of record of the denturist if the board or its agents are unable to establish the regular business hours. Inspections must be made to insure compliance with the standards of conduct and practice set forth in 37-29-401.

(3) Conditions considered by investigators to be a menace to the public health must be brought to the attention of the board for consideration and immediate action.

History: En. Sec. 15, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 8, Ch. 548, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (1)(f); and near end of (2) after "set", substituted "forth" for "for".

37-29-312. Revocation of license stays eligibility. A denturist whose license has been revoked either by the Montana board of denturitry or the similar body of another state is not eligible to apply for a license until 1 year after the date of revocation.

History: En. Sec. 16, I.M. No. 97, approved Nov. 6, 1984.

37-29-313. Renewal or reinstatement of license. One year after revocation of a license, the board at its discretion may grant a temporary license under a 1-year probationary period. At the end of the probationary period, the licensee must appear before the board and upon approval by the board and payment of appropriate fee must be fully reinstated. The board shall grant such approval upon being satisfied that the licensee has complied with this chapter during the probationary period and will comply in the future.

History: En. Sec. 17, I.M. No. 97, approved Nov. 6, 1984.

37-29-314 through 37-29-320 reserved.

37-29-321. Judicial review of board action. A person who is aggrieved by an action of the board in denying, refusing to renew, suspending, or revoking a denturist license may petition for judicial review as provided in Title 2, chapter 4, part 7.

History: En. Sec. 22, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 9, Ch. 548, L. 1985.

Compiler's Comments

1985 Amendment: Substituted existing language for former language that read: "A person who is aggrieved by an action of the board, in denying, refusing to renew, suspending or revoking a denturist license may appeal to the district court in the county in which he resides. Such appeal is perfected by filing with the clerk of the court, within 30 days following the action of the board of which complaint is made, a notice of appeal setting forth briefly the action complained of and how the petitioner has been deprived of any legal rights. A copy of the notice of appeal must be served upon the president or secretary of the board, with notice to the attorney general of the state of Montana in the manner of civil appeal, and the court may sustain or reverse the action of the board or direct the board to take further or other action with regard to the appeal."

Part 4

Regulation

37-29-401. Standards of conduct and practice. Each denturist must comply with the following standards in his practice:

(1) There shall be at least three separate rooms:

(a) a reception room;

(b) an operatory room; and

(c) a laboratory.

(2) The operatory room must have a sink and cuspidor with running water and a disposal system.

(3) There must be a sterilization unit and cold disinfectant in every office o insure the protection of the public. Each denturist shall take care to use proper sterilization and sanitation techniques in all phases of his work.

(4) Floors, walls, ceilings, and benches must be kept in a sanitary condiion.

(5) Every patient must have a separate and clean bib and a disposable up.

(6) Every denturist shall wear a clean and professional garment.

(7) Every denturist shall wash his hands with germicidal or antiseptic oap and water in the presence of each patient.

(8) Every licensed denturist must carry a current cardiopulmonary esuscitation card.

(9) Adequate and conveniently located toilet facilities must be provided within the building.

(10) A complete record of each patient must be kept.

(11) All teeth and materials used shall meet American dental association tandards.

(12) All nonmetal full dentures shall be permanently identified with the irst and last name of the owner at the time of processing the dentures.

History: En. Sec. 6, I.M. No. 97, approved Nov. 6, 1984.

37-29-402. Prohibitions. No licensed denturist may:

(1) extract or attempt to extract teeth;

(2) initially insert immediate dentures in the mouth of the intended vearer;

(3) diagnose or treat any abnormalities;

(4) recommend any prescription drug for any oral or medical disease; or

(5) construct or fit orthodontic appliances.

History: En. Sec. 5, I.M. No. 97, approved Nov. 6, 1984.

37-29-403. Procedure for making and fitting partial denture. (1) rior to making and fitting a partial denture, a denturist shall:

(a) formulate a study model of the intended denture;

(b) refer the patient to a dentist, together with the model for tooth cleaning, mouth preparation, and x-rays, as needed; and

(c) make the partial denture and fit it to the existing teeth after the dentist has completed the procedures listed in subsection (1)(b) and in accordance with the dentist's recommendations.

(2) A denturist may not cut, surgically remove, or surgically reduce any tissue or teeth in the process of fitting a partial denture.

(3) A denturist who makes or fits a partial denture in a manner not consistent with this section is subject to the sanctions provided in 37-29-311.

History: En. Sec. 15, Ch. 548, L. 1985.

37-29-404. Notice of board address — guarantee. (1) A notice must be posted in a conspicuous area on any premises where the practice of denturitry is conducted, with lettering of a size easily read by the average person and in substantially the following form:

> ANY CONSUMER WHO HAS A COMPLAINT RELATING TO PRACTICES OF THIS ESTABLISHMENT MAY CONTACT THE MONTANA BOARD OF DENTURITRY, DEPARTMENT OF COMMERCE, 1424 NINTH AVENUE, HELENA, MONTANA 59620.

(2) All denturist services must be unconditionally guaranteed for a period of not less than 90 days.

History: En. Sec. 20, I.M. No. 97, approved Nov. 6, 1984.

37-29-405. Advertising restrictions. No person may represent or hold himself out to the public as a denturist or as practicing denturitry unless licensed under this chapter.

History: En. Sec. 14, Ch. 548, L. 1985.

37-29-406 through 37-29-410 reserved.

37-29-411. Injunction. When it appears to the board that any person, firm, or corporation is violating any of the provisions of this chapter, the board may in its own name bring an action in a court of competent jurisdiction for an injunction against such violation, and the court may enjoin the person, firm, or corporation from violation of this chapter without regard to whether proceedings have been or may be instituted before the board or whether criminal proceedings have been or may be instituted.

History: En. Sec. 11, Ch. 548, L. 1985.

37-29-412. Violation and penalty. Violation of any provision of this chapter constitutes a misdemeanor and upon conviction is punishable by a fine of not less than $100 or more than $1,000 or by imprisonment for not more than 6 months in the county jail, or by both such fine and imprisonment.

History: En. Sec. 21, I.M. No. 97, approved Nov. 6, 1984.

CHAPTER 30

BARBERS

Part 1 — General

Section
37-30-101. Definitions — practice of barbering.

Part 2 — Board of Barbers

37-30-201. Organization — seal — records — deposit of money.
37-30-202. Compensation of members — expenses.
37-30-203. Powers and duties of board and department — conducting examinations — rulemaking — hiring of inspectors.

Part 3 — Licensing of Barbers

37-30-301. Certificate required.
37-30-302. Repealed.
37-30-303. Qualifications — application.
37-30-304. Repealed.
37-30-305. Examination.
37-30-306. Communicable disease — physician's certificate required.
37-30-307. Fees — handicapped persons exempted — other fees prohibited.
37-30-308. Display of certificate.
37-30-309. Admission of licensee from other state.
37-30-310. Instructor's certificate required — application and qualification — fees.
37-30-311. Instructor's certification examination.

Part 4 — Licensing and Regulation of Barbershops and Schools

37-30-401. License required.
37-30-402. Application procedure for barbershops — investigation and inspection — hearing — grant or refusal of license.
37-30-403. Facilities required for licensure — inspection.
37-30-404. Barber schools — operator — license fee.
37-30-405. Barber school license — application procedure.
37-30-406. Barber schools — curriculum and students.
37-30-407. Barber schools — operating requirements.
37-30-408 through 37-30-410 reserved.
37-30-411. Only licensed barber eligible for barbershop license.
37-30-412. Barbershop owner's duty to monitor employees.
37-30-413. Display of price schedule.
37-30-414 through 37-30-420 reserved.
37-30-421. Display of license.
37-30-422. Maintenance of sanitary conditions.
37-30-423. Initial inspection fee — renewal.
37-30-424. Fee for advanced barber training program, clinic, or seminar.
37-30-425. Refusal, suspension, or revocation of license.

Part 5 — Remedies for Violation

37-30-501. Penalty.

Part 1

General

37-30-101. Definitions — practice of barbering. (1) Unless the context requires otherwise, as used in this chapter the following definitions apply:

(a) "Barbershop" means a place where a person carries on, engages in, practices, or causes to be carried on, engaged in, or practiced the business of barbering.

(b) "Board" means the board of barbers provided for in 2-15-1856.

(c) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(2) Any one or any combination of the following practices, when done upon the human body for tonsorial purposes and not for the treatment of disease or physical or mental ailments and when done for payment, either directly or indirectly, constitutes the practice of barbering:

(a) shaving or trimming the beard;

(b) cutting, styling, coloring, or waving the hair;

(c) straightening of the hair by using chemicals;

(d) giving facial or scalp massage or treatment with oils, creams, lotions, or other preparations, either by hand or mechanical appliances;

(e) singeing or shampooing the hair or applying hair tonic or bleaching or highlighting the hair of male persons;

(f) applying cosmetic preparations, antiseptics, powders, oils, lotions, or gels to scalp, face, hands, or neck.

(3) The practice of cosmetology by a licensed cosmetologist, including cutting the hair of any person, does not constitute the practice of barbering.

History: (1)En. 66-401.1 by Sec. 34, Ch. 350, L. 1974; Sec. 66-401.1, R.C.M. 1947; (2)En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; Sec. 66-403, R.C.M. 1947; (3)En. Sec. 2, Ch. 127, L. 1929; re-en. Sec. 3228.20, R.C.M. 1935; amd. Sec. 2, Ch. 183, L. 1937; Sec. 66-402, R.C.M. 1947; R.C.M. 1947, 66-401.1, 66-402, 66-403(2); amd. Sec. 3, Ch. 274, L. 1981; (4)En. Sec. 4, Ch. 544, L. 1981; amd. Sec. 1, Ch. 565, L. 1983; amd. Sec. 1, Ch. 274, L. 1985.

Compiler's Comments

1985 Amendment: Deleted former (2) that defined "apprentice" as "a person who receives instruction in an approved barber school or college and from a barber authorized to practice barbering in this state".

1983 Amendment: In (3)(b) (now (2)(b)), after "cutting" inserted "styling, coloring, or waving"; inserted (3)(c) (now (2)(c)); in (3)(e) (now (2)(e)) after "hair tonic or" substituted "bleaching or highlighting" for "dyeing"; in (3)(f) (now (2)(f)) after "lotions" inserted "or gels" and after "face" inserted "hands".

1981 Amendments: Chapter 274 substituted "department of commerce" for "department of professional and occupational licensing" in (1)(c); changed internal references to the department and the board.

Chapter 544 added subsection (4) (now (3)).

Cross-References

Cosmetology not practice of barbering, 37-31-102.

Part 2

Board of Barbers

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1856.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-30-201. Organization — seal — records — deposit of money. (1) The board shall elect a president, secretary, and treasurer. It shall adopt a seal for the authentication of its orders and records.

(2) The department shall keep a record of proceedings of the board. Money collected by the department shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 7, Ch. 127, L. 1929; re-en. Sec. 3228.25, R.C.M. 1935; amd. Sec. 138, Ch. 147, L. 1963; amd. Sec. 23, Ch. 177, L. 1965; amd. Sec. 39, Ch. 350, L. 1974; R.C.M. 1947, 66-407; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Seal defined, 1-4-201.
Manner of making seal, 1-4-202.
Public records, Title 2, ch. 6.
Duties of Department, 37-1-101.

37-30-202. Compensation of members — expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 8, Ch. 127, L. 1929; re-en. Sec. 3228.26, R.C.M. 1935; amd. Sec. 2, Ch. 237, L. 1957; amd. Sec. 139, Ch. 147, L. 1963; amd. Sec. 2, Ch. 48, L. 1969; amd. Sec. 19, Ch. 93, L. 1969; amd. Sec. 1, Ch. 302, L. 1973; amd. Sec. 40, Ch. 350, L. 1974; amd. Sec. 25, Ch. 439, L. 1975; R.C.M. 1947, 66-408; amd. Sec. 24, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Substituted language after "compensation" for "of $25 per day while attending board meetings plus travel expenses, as provided for in 2-18-501 through 2-18-503, incurred in attending meetings of the board".

37-30-203. Powers and duties of board and department — conducting examinations — rulemaking — hiring of inspectors. (1) The department shall, subject to 37-1-101, conduct practical examinations of applicants for certificates of registration to practice as registered barbers or barber instructors not less than four times a year at times and places the board determines. The examinations shall cover the fundamentals of barbering, dermatology, and sanitation. The department shall issue certificates of registration.

(2) The board may adopt rules for the administration of this chapter.

(3) A person hired by the department to make an inspection of a barbershop, school, or college shall receive a salary plus travel expenses as provided for in 2-18-501 through 2-18-503, as amended.

History: En. Sec. 9, Ch. 127, L. 1929; amd. Sec. 2, Ch. 18, L. 1931; re-en. Sec. 3228.27, R.C.M. 1935; amd. Sec. 4, Ch. 150, L. 1939; amd. Sec. 3, Ch. 48, L. 1969; amd. Sec. 41, Ch. 350, L. 1974; amd. Sec. 10, Ch. 453, L. 1977; R.C.M. 1947, 66-409; amd. Sec. 3, Ch. 83, L. 1981; amd. Sec. 5, Ch. 544, L. 1981; amd. Sec. 2, Ch. 565, L. 1983; amd. Sec. 2, Ch. 274, L. 1985.

Compiler's Comments

1985 Amendment: In (1) in first sentence, after "applicants", deleted "for apprentice cards and" and in last sentence, after "issue", deleted "apprentice cards and".

1983 Amendment: Near middle of (1), after "registered barbers" inserted "or barber instructors".

1981 Amendments: Chapter 83 deleted a clause in (3) requiring board recommendation for hiring.

Chapter 544 changed "$30 per day" to "a salary" in (3); deleted former subsections (4) through (7) relating to establishment by the board of minimum prices for barber work in a city or town and exemption from section for students who have been enrolled less than 9 months in a barber college.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
Allocation for administrative purposes only, 2-15-121.
Quasi-judicial boards, 2-15-124.
Duties of boards, 37-1-131.

Part 3

Licensing of Barbers

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-30-301. Certificate required. (1) Except as provided in subsection (2), a person may not practice or attempt to practice barbering unless he first receives from the department a certificate of registration.

(2) The board may authorize the department to grant a temporary certificate to any person qualified to take the examination required by 37-30-305 who pays a temporary certification fee prescribed by the board. A person holding a temporary certificate may engage in the practice of barbering under the supervision of a certified barber for a period of 90 days or until the next examination scheduled by the board, whichever is longer.

History: En. Sec. 12, Ch. 127, L. 1929; re-en. Sec. 3228.30, R.C.M 1935; amd. Sec. 7, Ch. 150, L. 1939; amd. Sec. 44, Ch. 350, L. 1974; R.C.M. 1947, 66-412(1); amd. Sec. 3, Ch. 565, L. 1983; amd. Sec. 3, Ch. 274, L. 1985.

Compiler's Comments

1985 Amendment: In (1) near middle of sentence, after "barbering", deleted "or serve or attempt to serve as a barber apprentice".

1983 Amendment: At beginning of section, inserted exception clause, and inserted (2).

37-30-302. Repealed. Sec. 18, Ch. 565, L. 1983.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(6).

37-30-303. Qualifications — application. (1) A person is qualified to receive a certificate of registration to practice barbering only if he:

(a) has completed 2,000 hours of instruction at a licensed barber school or college or other school recognized by the board and graduated from a licensed barber school or college or other school recognized by the board;

(b) has successfully passed the examination conducted by the department under 37-30-305, subject to 37-1-101, to determine his fitness to practice barbering;

(c) is at least 18 years old;

(d) is a graduate of the 8th grade; and

(e) is of good moral character.

(2) An applicant must file with the department an application setting forth the following information:

(a) full name and age of the applicant;

(b) name and place of the licensed barber school or college or other school which he attended;

(c) dates of attendance at the licensed barber school or college or other school;

(d) whether the applicant received a certificate of graduation from a licensed barber school or college or other school; and

(e) other information the board considers necessary.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(1), (3), (4); amd. Sec. 4, Ch. 565, L. 1983; amd. Sec. 4, Ch. 274, L. 1985.

Compiler's Comments

1985 Amendment: In (1)(a) substituted present language for "has served as an apprentice barber as required by 37-30-305"; in (2) in lead-in deleted "apprentice" before "applicant"; in (2)(b), (2)(c), and (2)(d), after "barber school", inserted "or college"; and deleted former (3) that read: "An apprentice applicant must have graduated from a barber college or school licensed under this chapter or completed a course of study in barbering prescribed by the board of public education and successfully passed an apprentice examination conducted by the department, subject to 37-1-101, and pay to the department the required fee. The department shall then issue an apprentice barbering card which expires 2 years from the date of examination".

1983 Amendment: Substituted existing language for former text, which read: "(1) A person is qualified to receive a certificate of registration to practice barbering only by serving as an apprentice barber and successfully passing an examination conducted by the department, subject to 37-1-101, to determine his fitness to practice barbering.

(2) An apprentice must file with the department an application setting forth the following information:

(a) full name and age of apprentice;

(b) name and place of approved barber school;

(c) dates of attendance at approved barber school;

(d) whether the applicant received a certificate of graduation from an approved barber school; and

(e) other information the board considers necessary.

(3) An apprentice applicant must successfully pass an apprentice examination conducted by the department, subject to 37-1-101, and pay to the department the required fee. The department shall then issue an apprentice barbering card which expires 2 years from the date of examination."

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Apprenticeship, Title 39, ch. 6, part 1.

37-30-304. Repealed. Sec. 8, Ch. 274, L. 1985.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(5).

37-30-305. Examination. Except as provided in 37-30-309, an applicant for a barber's certificate of registration must apply to the department to take the examination for a barber's certificate of registration.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(7); amd. Sec. 6, Ch. 544, L. 1981; amd. Sec. 5, Ch. 274, L. 1985.

Compiler's Comments

1985 Amendment: Substituted beginning clause from "Except" through first "registration" for "On completion of 3 months of apprenticeship under the immediate personal supervision of a licensed barber, an apprentice" and deleted former second and third sentences of section, that read: "An apprentice may take the examination for a barber's certificate of registration as many as three times before expiration of the apprentice card. If an apprentice fails to pass the examination for a barber's certificate of registration three times, he shall surrender the apprentice card to the department and may not be authorized to do the acts which constitute the practice of barbering."

1981 Amendment: Changed "1 year" to "3 months" (deleted in 1985) near the beginning of the section.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-30-306. Communicable disease — physician's certificate required. (1) A barber or barber instructor may not receive a certificate of registration or renewal until he has presented to the board of barbers a physician's certificate showing him to be free of physical ailments that would tend to endanger the health of the public. A person practicing or teaching barbering without a certificate of registration is guilty of a violation of this chapter.

(2) It is unlawful for a barber, barber instructor, or student of barbering to practice the occupation of a barber or do barber work while he has an infectious, contagious, or communicable disease that would endanger the health of the public.

(3) If a barber or barber instructor, after securing his certificate, contracts a communicable, infectious, or contagious disease endangering the public health, the board of barbers shall revoke or suspend his certificate of registration until the board has satisfactory proof that the barber or barber instructor is no longer afflicted with the communicable, infectious, or contagious disease.

History: En. Sec. 1, Ch. 127, L. 1929; re-en. Sec. 3228.19, R.C.M. 1935; amd. Sec. 1, Ch. 183, L. 1937; amd. Sec. 33, Ch. 350, L. 1974; R.C.M. 1947, 66-401(part); amd. Sec. 6, Ch. 565, L. 1983; amd. Sec. 6, Ch. 274, L. 1985.

Compiler's Comments

1985 Amendment: Deleted references to "barber apprentice" after "barber" or "barber instructor" once in (1) and (2) and twice in (3).

1983 Amendment: In (1), (2), and twice in (3), inserted "barber instructor"; near end of (1) after "practicing" inserted "or teaching".

37-30-307. Fees — handicapped persons exempted — other fees prohibited. (1) The fee to be paid by an applicant for an examination to determine his fitness to receive a certificate of registration to practice barbering and for the issuance of the certificate shall be prescribed by the board.

(2) A person registered as a barber shall, before the expiration date established by rule of the department, annually pay a license fee, set by the board based on clerical and administrative costs, for the renewal of his certificate of registration. If a barber fails to have the certificate renewed before the expiration date, the barber shall on renewal of the certificate of registration pay a penalty prescribed by the board in addition to the regular renewal fee. If a certificate of registration is not renewed within 1 year after the date of expiration, the barber is not entitled to have the certificate of registration renewed or a new certificate of registration issued without first applying for and taking the examination and paying the fees provided for in this section.

(3) However, physically handicapped persons trained for the barber profession by the department of social and rehabilitation services and certified by that department as having graduated from a barber college licensed by the board are not required to pay fees and are for a period of 1 year immediately following their training exempt from all except the sanitary provisions of this chapter.

(4) No other or additional license or fee may be imposed on barbers by a municipality or other subdivision of this state.

History: En. Sec. 11, Ch. 127, L. 1929; amd. Sec. 4, Ch. 18, L. 1931; re-en. Sec. 3228.29, R.C.M. 1935; amd. Sec. 4, Ch. 183, L. 1937; amd. Sec. 6, Ch. 150, L. 1939; amd. Sec. 3, Ch. 237, L. 1957; amd. Sec. 4, Ch. 48, L. 1969; amd. Sec. 1, Ch. 87, L. 1971; amd. Sec. 1, Ch. 301, L. 1973; amd. Sec. 1, Ch. 330, L. 1973; amd. Sec. 43, Ch. 350, L. 1974; amd. Sec. 2, Ch. 533, L. 1977; R.C.M. 1947, 66-411(1), (2); amd. Sec. 52, Ch. 345, L. 1981; amd. Sec. 6, Ch. 390, L. 1983; amd. Sec. 5, Ch. 565, L. 1983; amd. Sec. 7, Ch. 274, L. 1985.

Compiler's Comments

1985 Amendment: Deleted former (1) that read: "The fee to be paid by an apprentice for an apprentice examination and an apprentice card shall be prescribed by the board"; in (2) after "barber" near beginning of first sentence, deleted "or barber apprentice"; and in (4) after "barbers", deleted "or barber apprentices".

1983 Amendments: Chapter 390 changed annual renewal date from before July 1 of each year to before expiration date established by rule of the department.

Chapter 565 substituted, in (4) (now (3)), after "as having", "graduated from a" for "successfully completed a 9-month course in a reputable" and after "barber college" inserted "licensed by the board".

1981 Amendment: Substituted "The fee ... shall be prescribed by the board" for "The fee ... is $25" at the end of (1) (now deleted); deleted "is $20" after "registration to practice barbering" in the middle of (2) (now (1)); substituted "The fee ... for the issuance of the certificate shall be prescribed by the board" for "The fee ... for the ... issuance of the certificate an additional $10" at the end of (2) (now (1)); deleted "in an amount not to exceed $15 and" after "set by the board" in the middle of the first sentence of (3) (now (2)); and substituted "pay a penalty prescribed by the board" for "pay a penalty of $10" near the end of the second sentence of (3) (now (2)).

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Nondiscrimination in licensing, 49-3-204.

37-30-308. Display of certificate. A holder of a certificate of registration shall display it in a conspicuous place adjacent to or near his work chair.

History: **En. Sec. 5, Ch. 127, L. 1929; re-en. Sec. 3228.23, R.C.M. 1935; amd. Sec. 3, Ch. 150, L. 1939; amd. Sec. 37, Ch. 350, L. 1974; R.C.M. 1947, 66-405(1).**

37-30-309. Admission of licensee from other state. The department may issue, at the board's discretion, a barber's license without examination to a person who holds a current license as a barber from another jurisdiction if the board finds that the standards for licensure in the other jurisdiction are at least substantially equivalent to those prevailing in this state and that the applicant is otherwise qualified.

History: **En. Sec. 11, Ch. 544, L. 1981.**

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-30-310. Instructor's certificate required — application and qualification — fees. (1) Except as provided in subsection (3), no person may for a fee instruct another in the practice of barbering unless that person holds an instructor's certificate issued by the board.

(2) The board shall issue an instructor's certificate to:

(a) any person engaged as an instructor in a barber college on October 1, 1983, upon payment of the certification fee; or

(b) any person who passes the instructor's examination given by the department and pays a certification fee established by the board.

(3) This section does not apply to persons paying the annual license fee required by 37-30-424.

History: **En. Sec. 13, Ch. 565, L. 1983.**

37-30-311. Instructor's certification examination. (1) An instructor's examination may be administered only to those persons who are high school graduates or possess the equivalent of a high school diploma and who:

(a) have been actively and continuously engaged in the practice of barbering in this state or in any other state requiring a barber's certificate or license, under laws substantially equivalent to this chapter, for at least 3 years immediately prior to application to take the instructor's certification examination; or

(b) have completed a course in barber instructor training of at least 500 hours of instruction at a barber school or college licensed by the board under this chapter.

(2) Instructor's examinations must be held at the time and place specified by the board, but must be held at least once a year.

(3) Anyone failing twice to pass an examination may not apply to retake the examination:

(a) sooner than 6 months after the date of the second failure; or

(b) until he has taken 200 hours of additional instructor training at a barber school or college licensed by the board.

History: En. Sec. 14, Ch. 565, L. 1983.

Part 4

Licensing and Regulation of Barbershops and Schools

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-30-401. License required. A barbershop, school, or college must be conducted at a fixed place of establishment. A person or corporation may not open or maintain a barbershop, school, or college or hold himself or itself out as engaging in or conducting a barbershop, school, or college unless first licensed by the board.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(part (8)).

37-30-402. Application procedure for barbershops — investigation and inspection — hearing — grant or refusal of license. An application for a barbershop license shall be in writing and verified on a form prescribed by the board. On receipt by the department of an application for a license and on payment to the department of the initial inspection fee, the board shall have an investigation and inspection made as to the character of the applicant and, on notice and after hearing, shall report its findings to the department, which shall grant a license if the board finds that the applicant is of good character and that the proposed barbershop is equipped and will be conducted as required under this chapter. The application must be granted or refused within 30 days from the date of filing of the application or within 15 days after the hearing on the application if a hearing is held.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(9); amd. Sec. 7, Ch. 565, L. 1983.

Compiler's Comments

1983 Amendment: Near beginning and end of section after "barbershop" deleted "school, or college".

Cross-References

Oath defined, 1-1-201.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Affidavits, Title 26, ch. 1, part 10.
Licensing investigation and review — record access, 37-1-135.
Perjury, 45-7-201.
False swearing, 45-7-202.

37-30-403. Facilities required for licensure — inspection. (1) Before a license is issued to conduct a barbershop, school, or college in this state, the barbershop, school, or college must be inspected by the department and approved by the board and shall meet the following requirements:

(a) It must have both hot and cold running water connected with the city water supply. In villages or towns where running water is not available, hot-water tanks shall have not less than a 2-gallon capacity with gravity pressure. Wastewater shall be disposed of through some system carrying it away from the building. This shall be done by sewer connections or in a manner meeting the requirements of the department of health and environmental sciences rules, city ordinances, and having the approval of the city or village board of health, as required by law.

(b) The headrest of a barber chair must be equipped so that each customer will be supplied with a clean, fresh paper or towel.

(c) It must have a closed cabinet for each chair, to keep instruments in when not in use, and must have proper sterilization equipment for immersing instruments before use on each customer.

(d) It must have a sufficient number of towels so that each customer will be served with a clean, laundered towel.

(e) It must be well-lighted, well-ventilated, and kept in a clean, orderly, and sanitary condition at all times.

(f) It must pay to the department the required fee.

(2) Barbershops, barber schools, or colleges shall be open for inspection during business hours, to members of the department.

(3) The board shall inspect annually each barbershop, school, or college to determine compliance with statutory requirements and board rules. The board may suspend or revoke the license of any barbershop, school, or college that violates statutory requirements or board rules.

(4) The board may grant a temporary license to a barbershop until such time as the initial inspection is completed.

(5) Barber schools and colleges must also comply with the provisions of 37-30-406 and 37-30-407.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(part); amd. Sec. 7, Ch. 544, L. 1981; amd. Sec. 8, Ch. 565, L. 1983.

Compiler's Comments

1983 Amendment: In (4), after "barbershop" deleted "school, or college"; and inserted (5).

1981 Amendment: Added subsections (3) and (4).

Cross-References

Licensing investigation and review — record access, 37-1-135.

37-30-404. Barber schools — operator — license fee. (1) A barber school or college operating in this state must have in charge a person who has had 3 years' continuous experience as a barber and who is licensed as a barber instructor under 37-30-310.

(2) The owner of the school or college shall first secure a license to operate granted by the board and issued by the department, on payment of an

annual license fee prescribed by the board, and shall keep the license prominently displayed.

(3) The owner shall, before commencing business, file with the secretary of state a bond to this state, which shall be approved by the attorney general, in the sum of $5,000, conditioned on the faithful compliance of the barber school or college with this chapter and the payment of judgments that may be obtained against the school, college, or owner on account of fraud, misrepresentation, or deceit practiced by them or by their agents.

(4) All barber schools or colleges shall keep prominently displayed a substantial sign as a barber school or barber college.

(5) On receiving students, all barber schools or colleges shall immediately apply to the department for student permits on blank forms prescribed by the board.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(part (8)); amd. Sec. 53, Ch. 345, L. 1981; amd. Sec. 8, Ch. 544, L. 1981; amd. Sec. 9, Ch. 565, L. 1983.

Compiler's Comments

1983 Amendment: In (1), reduced experience requirement from 10 to 3 years; at end of (1) inserted "and who is licensed as a barber instructor under 37-30-310"; in (2) substituted "license" for "permit" in two places; and in (3) increased bond amount from $2,000 to $5,000.

1981 Amendments: Chapter 345 substituted "an annual license fee prescribed by the board" for "an annual license fee of $50" near the end of (2).

Chapter 544 deleted former subsection (4) that prohibited barber schools and colleges from charging patrons for services.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-30-405. Barber school license — application procedure. (1) A person desiring to conduct a barber school or college must make application for the license required by 37-30-401 on forms provided by the department. The application must:

(a) include the name and address of the owners of the school and of the school itself;

(b) show that the person in charge has the experience required by 37-30-404;

(c) show that the applicant is of good moral character and possesses any education, training, and experience required by this chapter and any reasonable rules of the board;

(d) include a detailed floor plan of the school showing that it will have adequate space to conduct the activities of the school and that it will have at least two public restrooms, a storage room, a classroom, and a manager's office;

(e) include the names and addresses of the instructors;

(f) include a copy of any school rules;

(g) show that the school and its owner or manager can and will comply with the requirements of this chapter and the rules of the board; and

(h) be accompanied by the application and initial inspection fee established by the board.

(2) Upon receipt of a completed application, the department must conduct an inspection of the school to determine its compliance with 37-30-403, 37-30-406, 37-30-407, and this section. The board must issue the license if the school, its owner, and manager have:

(a) filed the bond required under 37-30-404; and

(b) complied with the requirements of this chapter and the rules of the board.

History: **En. Sec. 10, Ch. 565, L. 1983.**

37-30-406. Barber schools — curriculum and students. (1) A barber school or college licensed under this chapter shall require the completion by every student in not less than 11 months and not more than 15 months of 2,000 hours of instruction for graduation. Hours of training must be allocated in the following amounts to the courses or subjects specified:

(a) haircutting, 300 hours;

(b) shampooing, 150 hours;

(c) facials, 50 hours;

(d) styling, 300 hours;

(e) permanent waving, 300 hours;

(f) hair replacements, 50 hours;

(g) scalp treatments, 50 hours;

(h) chemical straightening, 50 hours;

(i) hair coloring, 200 hours;

(j) shaving, 25 hours;

(k) sales and products knowledge, 125 hours;

(l) shop management and bookkeeping, 50 hours;

(m) state barber laws, rules, and regulations, 25 hours;

(n) business ethics and personal grooming, 25 hours; and

(o) balance to be used at the discretion of the school, 300 hours.

(2) Within the limits prescribed by subsection (1), the course of study at a school or college must be designed to prepare a student to successfully complete the examinations required by 37-30-303 and 37-30-305.

(3) A barber school or college licensed under this chapter:

(a) shall use a grading system for each student, keep a record of the attendance of each student, and require satisfactory completion of regular examinations, of which records must be kept;

(b) shall maintain the records required by subsection (3)(a) for inspection by the board;

(c) shall certify to the board a copy of a student's transcript within 3 days of his completion of 2,000 hours of study and graduation;

(d) shall furnish to a student at the time of his initial registration a statement showing the cost of tuition, books, equipment, supplies, and any other charges to be made prior to graduation;

(e) shall employ one instructor for every 15 students;

(f) may not begin instruction at a new school with less than 7 students;

(g) may not require a student to take more than 8 hours of classroom instruction a day;

(h) may not allow a student to engage in the practice of barbering upon the public until he has completed 100 hours of instruction at the school; and

(i) may not enroll any student transferring from another school until a certified transcript of the student's course work has been received and approved by the board.

History: **En. Sec. 11, Ch. 565, L. 1983.**

37-30-407. Barber schools — operating requirements. (1) A barber school or college licensed or to be licensed under this chapter:

(a) may not allow any person to sleep in or use for residential or any other purpose tending to make unsanitary any part of the school or college used for instructional purposes;

(b) may not allow a barbershop to be operated in conjunction with the school or college;

(c) may not allow a student, other than a student teacher, to teach other students;

(d) may not advertise the price of any barbering service offered to members of the public;

(e) shall use any schedule of prices adopted by rule of the board;

(f) may not engage in false or deceptive advertising;

(g) may not advertise in any manner until a license has been received;

(h) shall notify the board of any change in the management of the school or college and of the discharge of any barber certified under this chapter; and

(i) may employ only instructors licensed under this chapter.

(2) It is the intent of the legislature, for the purposes of (d) and (e) of subsection (1) to avail itself of the immunity from the Sherman Antitrust Act (15 U.S.C. 1, et seq.) provided under the decision of the United States supreme court in Parker v. Brown, 317 US 341 (1943).

History: En. Sec. 12, Ch. 565, L. 1983.

37-30-408 through 37-30-410 reserved.

37-30-411. Only licensed barber eligible for barbershop license. A barbershop license may not be issued to anyone except one who holds a valid barber's certificate under this chapter, and a barbershop may not be maintained or conducted except by one who holds a barbershop license issued by the department under this chapter. This certificate or license is not transferable as to person or place.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(10).

37-30-412. Barbershop owner's duty to monitor employees. An owner or manager of a barbershop licensed under this chapter shall make certain that each barber employed holds a certificate to practice barbering in this state and that employees observe the sanitary rules of the department of health and environmental sciences and the department of commerce and report to the department of commerce the name of a person practicing barbering therein who has a communicable disease.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(part); amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in two places.

37-30-413. Display of price schedule. A barbershop shall display a schedule of prices in a conspicuous place.

History: En. Sec. 5, Ch. 127, L. 1929; re-en. Sec. 3228.23, R.C.M. 1935; amd. Sec. 3, Ch. 150, L. 1939; amd. Sec. 37, Ch. 350, L. 1974; R.C.M. 1947, 66-405(3).

37-30-414 through 37-30-420 reserved.

37-30-421. Display of license. A license to operate a barbershop, school, or college shall specify the name of the licensee and shall be kept in a conspicuous place in the barbershop, school, or college. A barbershop, school, or college may not be conducted or held out as being conducted under any name except the name appearing as licensee on the license issued by the department.

History: En. Sec. 5, Ch. 127, L. 1929; re-en. Sec. 3228.23, R.C.M. 1935; amd. Sec. 3, Ch. 150, L. 1939; amd. Sec. 37, Ch. 350, L. 1974; R.C.M. 1947, 66-405(2).

37-30-422. Maintenance of sanitary conditions. Barbershops, barber schools, and barber colleges shall be operated and maintained in a sanitary condition in order to preserve the public health and prevent the spread of disease. The board of barbers in consultation with the department of health and environmental sciences may adopt rules to preserve the public health and prevent the spread of disease.

History: En. Sec. 1, Ch. 127, L. 1929; re-en. Sec. 3228.19, R.C.M. 1935; amd. Sec. 1, Ch. 183, L. 1937; amd. Sec. 33, Ch. 350, L. 1974; R.C.M. 1947, 66-401(part); amd. Sec. 9, Ch. 544, L. 1981.

Compiler's Comments

1981 Amendment: Changed "and the department" to "in consultation with the department" after "board of barbers" in second sentence.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-30-423. Initial inspection fee — renewal. (1) In addition to the fees and charges provided by law on March 11, 1939, barbershops established prior to that date and which had been under the inspection of the board shall pay an annual license fee set by the board based on clerical and administrative costs. Barbershops established after March 11, 1939, shall pay an initial inspection fee prescribed by the board for the first year or portion thereof and shall pay an annual license fee set by the board.

(2) Barbershop, school, or college licenses, once issued, expire each year on the date established by rule of the department, and an owner or manager of a barbershop, school, or college which continues in active operation shall annually, before the expiration date, renew his barbershop, school, or college license and pay the required fee. A barbershop which fails to have the license renewed before the expiration date each year shall, on renewal, pay a penalty prescribed by the board, and a barber school or college which fails to have the license renewed before the expiration date each year shall, on renewal, pay a penalty prescribed by the board.

History: En. Sec. 11, Ch. 127, L. 1929; amd. Sec. 4, Ch. 18, L. 1931; re-en. Sec. 3228.29, R.C.M. 1935; amd. Sec. 4, Ch. 183, L. 1937; amd. Sec. 6, Ch. 150, L. 1939; amd. Sec. 3, Ch. 237, L. 1957; amd. Sec. 4, Ch. 48, L. 1969; amd. Sec. 1, Ch. 301, L. 1973; amd. Sec. 1, Ch. 330, L. 1973; amd. Sec. 43, Ch. 350, L. 1974; amd. Sec. 2, Ch. 533, L. 1977; R.C.M. 1947, 66-411(part); amd. Sec. 54, Ch. 345, L. 1981; amd. Sec. 7, Ch. 390, L. 1983.

Compiler's Comments

1983 Amendment: Near beginning of (2), after "college licenses" inserted "once issued"; after "expire" substituted "each year on the date established by rule of the department" for "on July 1 of each year following the issuance of the license"; substituted "the expiration date" for "July 1" in three places in remainder of (2).

1981 Amendment: Deleted "in an amount not to exceed $15 and" after "an annual license fee set by the board" in the middle of (1); substituted "an initial inspection fee prescribed by the board" for "an initial inspection fee of $25" near the end of (1); deleted "in an amount not to exceed $15" after "an annual license fee set by the board" at the end of (1); substituted "pay a penalty prescribed by the board" for "pay a penalty of $10" near the end of (2); and substituted "pay a penalty prescribed by the board" for "pay a penalty of $55" at the end of (2).

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-30-424. Fee for advanced barber training program, clinic, or seminar. Any person not a resident of this state conducting in this state any advanced barber training program, clinic, or seminar for barbers as defined in this chapter shall pay an annual license fee prescribed by the board to the department or a 10-day license fee prescribed by the board and display the license while operating. Any such advanced barber training program, clinic, or seminar may be inspected by the department at reasonable times during operation.

History: En. Sec. 11, Ch. 127, L. 1929; amd. Sec. 4, Ch. 18, L. 1931; re-en. Sec. 3228.29, R.C.M. 1935; amd. Sec. 4, Ch. 183, L. 1937; amd. Sec. 6, Ch. 150, L. 1939; amd. Sec. 3, Ch. 237, L. 1957; amd. Sec. 4, Ch. 48, L. 1969; amd. Sec. 1, Ch. 301, L. 1973; amd. Sec. 1, Ch. 330, L. 1973; amd. Sec. 43, Ch. 350, L. 1974; amd. Sec. 2, Ch. 533, L. 1977; R.C.M. 1947, 66-411(part); amd. Sec. 55, Ch. 345, L. 1981; amd. Sec. 15, Ch. 565, L. 1983.

Compiler's Comments

1983 Amendment: Near beginning of section after "person" inserted "not a resident of this state".

1981 Amendment: Substituted "an annual license fee prescribed by the board" for "an annual license fee of $50" in the middle of the section; and substituted "a 10-day license fee prescribed by the board" for "a 10-day license fee of $15" in the middle of the section.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-30-425. Refusal, suspension, or revocation of license. The board may, after notice and opportunity for a hearing, either refuse to issue or renew or may suspend or revoke a barbershop or barber school or college license for any one or combination of the following causes:

(1) the violation of any of the provisions of 37-30-308; 37-30-403, except subsection (1)(f); 37-30-406; 37-30-407; 37-30-412; 37-30-413; and 37-30-421;

(2) gross malpractice or gross incompetency;

(3) continued practice by a person knowingly having an infectious or contagious disease;

(4) advertising by means of knowingly false or deceptive statements;

(5) advertising, practicing, or attempting to practice under a trade name other than one's own;

(6) habitual drunkenness or addiction to the use of morphine, cocaine, or other habit-forming drugs;

(7) the commission of any of the offenses described in 37-30-203.

History: En. 66-403.1 by Sec. 36, Ch. 350, L. 1974; R.C.M. 1947, 66-403.1; amd. Sec. 10, Ch. 544, L. 1981; amd. Sec. 16, Ch. 565, L. 1983.

Compiler's Comments

1983 Amendment: In (1), inserted references to 37-30-406 and 37-30-407.

1981 Amendment: Deleted as cause conviction of a felony.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.
Duties of director in investigation of unethical conduct, 37-1-121.
Duty of Board to adopt rules on conduct, 37-1-131.
Licensing investigation and review — record access, 37-1-135.
Disciplinary authority of boards — injunctions, 37-1-136.

Part 5
Remedies for Violation

37-30-501. Penalty. A person practicing the occupation of a barber or barber instructor without first having obtained a license under this chapter or a person knowingly employing a barber or barber instructor who has not obtained a license or a person who falsely pretends to be qualified to practice the occupation of a barber or barber instructor or a person who otherwise violates this chapter is guilty of a misdemeanor and on conviction shall be fined not less than $25 or more than $200 or imprisoned in the county jail for not less than 10 days or more than 90 days, or both. In addition, the board may after hearing suspend or revoke a barber's or barber instructor's certificate of registration or license to operate a barbershop, school, or college, or both, by reason of the person willfully violating this chapter or persistently failing to conform to the rules adopted by the board.

History: En. Sec. 10, Ch. 127, L. 1929; amd. Sec. 2, Ch. 18, L. 1931; re-en. Sec. 3228.28, R.C.M. 1935; amd. Sec. 5, Ch. 150, L. 1939; amd. Sec. 42, Ch. 350, L. 1974; R.C.M. 1947, 66-410; amd. Sec. 17, Ch. 565, L. 1983.

Compiler's Comments
1983 Amendment: Inserted "or barber instructor" in four places.

Cross-References
Prosecutorial duties of County Attorney, 7-4-2712.
Duties of County Attorney relating to state matters, 7-4-2716.

CHAPTER 31

COSMETOLOGY

Part 1 — General

Section
37-31-101. Definitions.
37-31-102. Exemptions.

Part 2 — Board of Cosmetologists

37-31-201. Organization — seal.
37-31-202. Compensation of members — expenses.
37-31-203. Rulemaking powers.
37-31-204. Sanitary rules.

Part 3 — Licensing

37-31-301. Prohibited acts.
37-31-302. License required to practice, teach, or operate shop or school.
37-31-303. Application for license to practice or teach.
37-31-304. Qualifications of applicants for license to practice.
37-31-305. Qualifications of applicants for license to teach.

37-31-306. Reciprocity.
37-31-307. Temporary license pending examination.
37-31-308. Examination — reexamination — exemption for handicapped persons.
37-31-309 and 37-31-310 reserved.
37-31-311. School of cosmetology — certificate of registration — requirements — bond — curriculum.
37-31-312. Inspection.
37-31-313 through 37-31-320 reserved.
37-31-321. Issuance of licenses and certificates.
37-31-322. Renewal — continuing education — delinquency fee.
37-31-323. Fees.
37-31-324. Deposit of fees.
37-31-325 through 37-31-330 reserved.
37-31-331. Refusal, revocation, or suspension of licenses — grounds — notice and hearing.
37-31-332. Suspension for contracting communicable disease.
37-31-333. Appeal from actions of board.
37-31-334. Penalty — injunction.

Chapter Cross-References

Electrology, Title 37, ch. 32.

Part 1
General

37-31-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Practice and teaching of cosmetology" includes work generally and usually included in the terms "hairdressing", "manicuring", and "beauty culture" and performed in so-called hairdressing and beauty shops or by itinerant cosmetologists, which work is done for the embellishment, cleanliness, and beautification of the hair, scalp, face, arms, feet, or hands. The practice and teaching of cosmetology shall not be construed to include itinerant cosmetologists who perform their services without compensation for demonstration purposes in any regularly established store or place of business holding a license from the state of Montana as such store or place of business.

(2) "Cosmetological establishment" means premises, building, or part of a building in which is practiced a branch or combination of branches of cosmetology or the occupation of a hairdresser and cosmetician or cosmetologist and which must have a manager-operator in charge.

(3) "Board" means the board of cosmetologists provided for in 2-15-1857.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Manicuring" includes nail care of the hands and feet and the application and maintenance of artificial nails.

(6) "Manicuring shop" means premises, a building, or part of a building in which the art of manicuring is practiced.

History: En. Sec. 2, Ch. 104, L. 1929; re-en. Sec. 3228.2, R.C.M. 1935; amd. Sec. 2, Ch. 222, L. 1939; amd. Sec. 2, Ch. 20, L. 1955; amd. Sec. 2, Ch. 244, L. 1961; amd. Sec. 1, Ch. 175, L. 1974; amd. Sec. 64, Ch. 350, L. 1974; R.C.M. 1947, 66-802; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 260, L. 1985; amd. Sec. 1, Ch. 602, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 260 deleted former (1)(b) that read: "cosmetological artists who demonstrate cosmetological skills under the auspices of the state association of cosmetology or its affiliated units, whether at meetings or in licensed cosmetological establishments"; and made minor changes in punctuation and phraseology.

Chapter 602 in (1), after ""hairdressing"" inserted ""manicuring"" and after "arms" inserted "feet"; deleted former (1)(b); and inserted (5) and (6). Chapter 602 amendment effective January 1, 1986.

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (4); changed internal references to the department and the board.

Cross-References

Practice of barbering defined, 37-30-101.

37-31-102. Exemptions. Nothing in this chapter prohibits:

(1) service in case of emergency or domestic administration without compensation;

(2) services by persons authorized under the laws of this state to practice dentistry, the healing arts, or mortuary science; or

(3) services by barbers lawfully engaged in the performance of the usual and ordinary duties of their vocation or in cutting women's hair.

History: En. Sec. 18, Ch. 104, L. 1929; re-en. Sec. 3228.18, R.C.M. 1935; amd. Sec. 2, Ch. 101, L. 1977; R.C.M. 1947, 66-818.

Cross-References

Practice of barbering defined, 37-30-101.

Part 2

Board of Cosmetologists

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1857.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-31-201. Organization — seal. (1) The board shall annually, before March 1, elect from its number a president, vice-president, and secretary-treasurer.

(2) The board shall adopt a seal and authenticate its acts.

History: (1)En. Sec. 5, Ch. 104, L. 1929; re-en. Sec. 3228.5, R.C.M. 1935; amd. Sec. 5, Ch. 222, L. 1939; amd. Sec. 66, Ch. 350, L. 1974; Sec. 66-805, R.C.M. 1947; (2)En. Sec. 6, Ch. 104, L. 1929; re-en. Sec. 3228.6, R.C.M. 1935; amd. Sec. 2, Ch. 80, L. 1941; amd. Sec. 5, Ch. 244, L. 1961; amd. Sec. 67, Ch. 350, L. 1974; amd. Sec. 1, Ch. 305, L. 1977; Sec. 66-806, R.C.M. 1947; R.C.M. 1947, 66-805, 66-806(2).

Cross-References

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

37-31-202. Compensation of members — expenses. Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 9, Ch. 104, L. 1929; re-en. Sec. 3228.9, R.C.M. 1935; amd. Sec. 8, Ch. 222, L. 1939; amd. Sec. 135, Ch. 147, L. 1963; amd. Sec. 1, Ch. 133, L. 1967; amd. Sec. 1, Ch. 224, L. 1974; amd. Sec. 70, Ch. 350, L. 1974; amd. Sec. 28, Ch. 439, L. 1975; amd. Sec. 1, Ch. 531, L. 1977; R.C.M. 1947, 66-809(part); amd. Sec. 25, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Substituted section for "Each member of the board may receive as compensation for his services the sum of $25 per day for each day in actual attendance at any meeting of the board. In addition, each member shall be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, necessarily incurred in the performance of official duties".

37-31-203. *(Temporary)* **Rulemaking powers.** The board shall prescribe rules for:

(1) the conduct of its business;

(2) the qualification, examination, and registration of applicants to practice or teach cosmetology;

(3) the qualification and registration of applicants for manager-operator licenses;

(4) the regulation and instruction of apprentices and students;

(5) the conduct of schools of cosmetology for apprentices and students; and

(6) generally the conduct of the persons, firms, or corporations affected by this chapter.

37-31-203. *(Effective January 1, 1986)* **Rulemaking powers.** The board shall prescribe rules for:

(1) the conduct of its business;

(2) the qualification, examination, and registration of applicants to practice cosmetology or manicuring or to teach cosmetology;

(3) the qualification and registration of applicants for manager-operator licenses;

(4) the regulation and instruction of apprentices and students;

(5) the conduct of schools of cosmetology and schools of manicuring for apprentices and students; and

(6) generally the conduct of the persons, firms, or corporations affected by this chapter.

History: En. Sec. 6, Ch. 104, L. 1929; re-en. Sec. 3228.6, R.C.M. 1935; amd. Sec. 2, Ch. 80, L. 1941; amd. Sec. 5, Ch. 244, L. 1961; amd. Sec. 67, Ch. 350, L. 1974; amd. Sec. 1, Ch. 305, L. 1977; R.C.M. 1947, 66-806(1); amd. Sec. 15, Ch. 22, L. 1979; amd. Sec. 2, Ch. 602, L. 1985.

Compiler's Comments

1985 Amendment: In (2) after "practice", inserted "cosmetology or manicuring"; and in (5) after "schools of cosmetology", inserted "and schools of manicuring". Amendment effective January 1, 1986.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Duties of boards, 37-1-131.

37-31-204. Sanitary rules. The board, subject to the approval of the department of health and environmental sciences, shall prescribe sanitary rules it considers necessary, with particular reference to the precautions necessary to be employed to prevent the creation and spread of infectious and contagious diseases.

History: En. Sec. 12, Ch. 104, L. 1929; re-en. Sec. 3228.12, R.C.M. 1935; amd. Sec. 72, Ch. 350, L. 1974; R.C.M. 1947, 66-812.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-31-301. *(Temporary)* **Prohibited acts.** (1) Without an appropriate license issued under this chapter, it shall be unlawful to:

(a) practice cosmetology for compensation;

(b) own, manage, operate, or conduct a school of cosmetology;

(c) manage or operate a cosmetology shop or beauty parlor;

(d) teach in a school of cosmetology;

(e) practice manicuring;

(f) practice as a finger waver.

(2) It is unlawful:

(a) for any person who owns, manages, or controls a cosmetology shop to employ or use an unlicensed person as a cosmetologist;

(b) to operate a cosmetology school without complying with all of the regulations of 37-31-311;

(c) to practice cosmetology in any place other than in a licensed establishment as provided in this chapter, except when a licensed operator is requested by a customer to go to a place other than a licensed establishment and is sent to such customer from a licensed establishment;

(d) to violate any of the provisions of this chapter.

37-31-301. *(Effective January 1, 1986)* **Prohibited acts.** (1) Without an appropriate license issued under this chapter, it shall be unlawful to:

(a) practice cosmetology for compensation;

(b) own, manage, operate, or conduct a school of cosmetology or school of manicuring;

(c) manage or operate a cosmetology shop, manicuring shop, or beauty parlor;

(d) teach in a school of cosmetology or school of manicuring;

(e) practice manicuring for compensation;

(f) practice as a finger waver.

(2) It is unlawful:

(a) for any person who owns, manages, or controls a cosmetology shop to employ or use an unlicensed person as a cosmetologist or manicurist;

(b) to operate a cosmetology school without complying with all of the regulations of 37-31-311;

(c) to practice cosmetology in any place other than in a licensed establishment as provided in this chapter, except when a licensed operator is requested by a customer to go to a place other than a licensed establishment and is sent to such customer from a licensed establishment;

(d) for any person who owns, manages, or controls a manicuring shop to employ or use an unlicensed person as a manicurist;

(e) to operate a manicuring school without complying with 37-31-311;

(f) to violate any of the provisions of this chapter.

History: En. Sec. 17, Ch. 104, L. 1929; amd. Sec. 1, Ch. 13, L. 1931; re-en. Sec. 3228.17, R.C.M. 1935; amd. Sec. 14, Ch. 222, L. 1939; amd. Sec. 1, Ch. 140, L. 1959; R.C.M. 1947, 66-817(A), (B); amd. Sec. 3, Ch. 602, L. 1985.

Compiler's Comments

1985 Amendment: In (1)(b) and (1)(d), at end inserted "or school of manicuring"; in (1)(c), after "cosmetology shop" inserted "manicuring shop"; in (1)(e), after "manicuring" inserted "for compensation"; in (2)(a), at end after "cosmetologist" inserted "or manicurist"; inserted (2)(d) and (2)(e). Amendment effective January 1, 1986.

37-31-302. *(Temporary)* **License required to practice, teach, or operate shop or school.** (1) No person may practice or teach cosmetology without a license.

(2) No place may be used or maintained for the teaching of cosmetology for compensation except under a certificate of registration.

(3) No person may operate, manage, or conduct a beauty shop or school and teach the art or practice without a manager-operator license.

(4) A person, firm, partnership, or corporation desiring to operate a cosmetological establishment shall make an application to the department for a certificate of registration and license. The application shall be accompanied by the annual registration fee.

(5) No license may be issued until the inspection fees required in 37-31-312 have been paid.

37-31-302. *(Effective January 1, 1986)* **License required to practice, teach, or operate shop or school.** (1) No person may practice or teach cosmetology or practice or teach manicuring without a license.

(2) No place may be used or maintained for the teaching of cosmetology or manicuring for compensation except under a certificate of registration.

(3) No person may operate or manage a beauty shop or a manicuring shop or practice cosmetology or manicuring without a manager-operator license.

(4) No person may operate or conduct a school of cosmetology or a school of manicuring and teach the art of cosmetology or manicuring without a license to teach cosmetology.

(5) A person, firm, partnership, or corporation desiring to operate a cosmetological establishment shall make an application to the department for a certificate of registration and license. The application shall be accompanied by the annual registration fee.

(6) No license may be issued until the inspection fees required in 37-31-312 have been paid.

History: En. Sec. 1, Ch. 104, L. 1929; re-en. Sec. 3228.1, R.C.M. 1935; amd. Sec. 1, Ch. 222, L. 1939; amd. Sec. 1, Ch. 80, L. 1941; amd. Sec. 1, Ch. 211, L. 1945; amd. Sec. 1, Ch. 20, L. 1955; amd. Sec. 1, Ch. 244, L. 1961; amd. Sec. 1, Ch. 85, L. 1974; amd. Sec. 63, Ch. 350, L. 1974; R.C.M. 1947, 66-801; amd. Sec. 4, Ch. 106, L. 1981; amd. Sec. 4, Ch. 602, L. 1985.

Compiler's Comments

1985 Amendment: In (1) after "cosmetology", inserted "or practice or teach manicuring"; in (2) after "cosmetology", inserted "or manicuring"; in (3) substituted present language for former text that read: "No person may operate, manage, or conduct a beauty shop or school and teach the art or practice without a manager-operator license"; and inserted (4). Amendment effective January 1, 1986.

1981 Amendment: At the end of (3), deleted the requirement that a manager-operator license not be issued unless the applicant has been engaged in or teaching the practice of cosmetology in this state for 1 year.

37-31-303. *(Temporary)* **Application for license to practice or teach.** The applicant must qualify by filing an application prescribed by the board and by taking and passing the examination prescribed by the board and given by the department, subject to 37-1-101. The license must be renewed annually under 37-31-322.

37-31-303. *(Effective January 1, 1986)* **Application for license to practice or teach.** An applicant for a license to practice or teach cosmetology or for a license to practice manicuring must qualify by filing an application prescribed by the board and by taking and passing the examination prescribed by the board and given by the department, subject to 37-1-101. The license must be renewed annually under 37-31-322.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(3); amd. Sec. 5, Ch. 602, L. 1985.

Compiler's Comments

1985 Amendment: At beginning substituted "An applicant for a license to practice or teach cosmetology or for a license to practice manicuring" for "The applicant". Amendment effective January 1, 1986.

37-31-304. Qualifications of applicants for license to practice. (1) Before a person may practice cosmetology, he must obtain a license to practice cosmetology from the department. Before a person may practice manicuring, he must obtain a license to practice manicuring from the department unless he is licensed to practice cosmetology.

(2) (a) To be eligible to take the examination to practice cosmetology, the applicant must be not less than 18 years of age, a graduate of the 8th grade, and of good moral character. The applicant must have completed a continuous course of study of at least 2,000 hours in a registered beauty school, which course of study has been distributed over a period of not less than 10 months or more than 14 months, and must have received a diploma from the beauty school or must have completed the course of study in cosmetology prescribed by the board of public education.

(b) A person qualified under subsection (2)(a) shall file with the department a written application to take the examination and shall deposit with the department the required examination fee and pass an examination as to his fitness to practice cosmetology.

(3) (a) To be eligible to take the examination to practice manicuring, an applicant must be not less than 18 years of age, be of good moral character, possess a high school diploma, an equivalent of a high school diploma recognized by the superintendent of public instruction, or a certificate of completion from a postsecondary vocational-technical center program, and have completed a course of study prescribed by the board in a registered school of cosmetology or a registered school of manicuring.

(b) A person qualified under subsection (3)(a) must file with the department a written application to take the examination and deposit with the department the required examination fee.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(1); amd. Sec. 2, Ch. 260, L. 1985; amd. Sec. 6, Ch. 602, L. 1985.

Compiler's Comments

1985 Amendments: Chapters 260 and 602 near middle of (2)(b) after "application to take the examination", deleted "accompanied by a health certificate issued by a registered, licensed physician on a form supplied by the department".

Chapter 602 in (1) substituted present language for former text that read: "Before one may practice or teach cosmetology or a person, firm, partnership, or corporation may operate a school of cosmetology, the person, firm, partnership, or corporation must obtain a license or certificate of registration from the department"; in (2)(b) at beginning substituted "A person qualified under subsection (2)(a)" for "The person qualified"; and inserted (3)(a) and (3)(b). Chapter 602 amendment effective January 1, 1986.

Cross-References

Licensing investigation and review — record access, 37-1-135.

37-31-305. Qualifications of applicants for license to teach. (1) Before a person may teach manicuring to persons seeking only to be licensed to practice manicuring or teach cosmetology, he must obtain from the department a license to teach cosmetology.

(2) To be eligible to take an examination to obtain a license to teach cosmetology, a person must:

(a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and

(b) (i) have a license to practice cosmetology issued by the department and have received a diploma from a registered school of cosmetology approved by the board, certifying satisfactory completion of 650 hours of student teacher training; or

(ii) have been actively engaged as a beauty operator for 3 continuous years immediately prior to taking the teachers' examination.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(2); amd. Sec. 5, Ch. 106, L. 1981; amd. Sec. 3, Ch. 260, L. 1985; amd. Sec. 7, Ch. 602, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 260 in (2)(b)(i) after "department", deleted "been actively engaged as a beauty operator for 1 continuous year immediately prior to taking the examination", and increased hours of training from 500 to 650.

Chapter 602 in (1) and introductory clause of (2), substituted present language for former text that read: "Before an applicant may take an examination to obtain a license as a teacher of cosmetology, he must:"; renumbered subsections; and in (2)(b)(i) made same deletion as Ch. 260. Chapter 602 amendment effective January 1, 1986.

1981 Amendment: Changed "an operator's license" to "a license" at the beginning of (2)(a) (now (2)(b)(i)).

Cross-References

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-31-306. Reciprocity. A person who is licensed to practice cosmetology or is licensed as a manager-operator in another state may be eligible for reciprocity licensing in this state if he fulfills the requirements of this chapter and the rules adopted under it, other than those relating to examination. However, he may be licensed without examination only if the state in which he is licensed grants the same privilege to persons licensed in this state who seek licensure as cosmetologists or manager-operators in that state.

History: En. 66-808.1 by Sec. 5, Ch. 533, L. 1977; R.C.M. 1947, 66-808.1; amd. Sec. 6, Ch. 106, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "or is licensed as a manager-operator" near the beginning of the first sentence; inserted "or manager-operators" near the end of the last sentence.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-31-307. Temporary license pending examination. The board may authorize the department to grant to a graduate of a registered school of any state, on the payment of the fee prescribed by law, a temporary license authorizing the graduate to practice under the supervision of a licensed cosmetologist in the practice of hairdressing and beauty culture for a period of not to exceed 90 days or until the next examination is held by the department and the results are announced. No temporary license may be issued except on the presentation by the applicant of a certificate of graduation from such a registered school. The temporary licenses are not renewable.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(5); amd. Sec. 1, Ch. 460, L. 1979; amd. Sec. 7, Ch. 106, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "as an operator" after "to practice" near the middle of the first sentence.

37-31-308. Examination — reexamination — exemption for handicapped persons. (1) Examinations for a license to practice cosmetology or manicuring or to teach cosmetology shall be held at places and times specified by the board. The examinations shall be conducted by the department, subject to 37-1-101. The examinations may not be confined to a specific method or system.

(2) Anyone failing twice to pass the examination for a license to practice cosmetology may not apply to retake the examination:

(a) sooner than 6 months after the date of the second failure; or

(b) until he has taken 200 hours additional training at a registered school of cosmetology approved by the board.

(3) Anyone failing twice to pass the examination for a license to practice manicuring must meet the additional requirements prescribed by the board before applying to retake the examination.

(4) Anyone failing twice to pass the examination for a license to teach cosmetology must wait 1 year before reapplying to take the examination. Upon reapplying, the applicant must provide certification of completion of 500 hours of teacher training during that year in a registered school licensed as a teacher training unit.

(5) Physically handicapped persons trained for cosmetology or manicuring by the department of social and rehabilitation services shall, for a period of 1 year immediately following their graduation, be exempt from the examination and the fees described in 37-31-323. On certification from the department of social and rehabilitation services that a department of social and rehabilitation services beneficiary has successfully completed the required training in a beauty school or manicuring school, the department shall issue the person the necessary certificate or license to practice the profession in this state.

History: (1), (3)En. Sec. 8, Ch. 104, L. 1929; amd. Sec. 1, Ch. 85, L. 1935; re-en. Sec. 3228.8, R.C.M. 1935; amd. Sec. 7, Ch. 222, L. 1939; amd. Sec. 69, Ch. 350, L. 1974; Sec. 66-808, R.C.M. 1947; (2)En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; Sec. 66-803, R.C.M. 1947; R.C.M. 1947, 66-803(4), 66-808; amd. Sec. 8, Ch. 106, L. 1981; amd. Sec. 4, Ch. 260, L. 1985; amd. Sec. 8, Ch. 602, L. 1985.

Compiler's Comments

1985 Amendments: Chapters 260 and 602 in (1) in first sentence, after "practice", inserted "or to teach cosmetology", near middle of sentence, after "held at", substituted "places and times" for "a place and time", at end of sentence after "board", deleted "at least two times a year and not more than five times a year and for teacher's license once each year"; in (2) after "examination", inserted "for a license to practice cosmetology"; in (2)(b) before "training", deleted "teacher"; and inserted (4).

Chapter 602 in (1) in first sentence, after "license to practice", inserted "cosmetology or manicuring"; inserted (3); in (5), near beginning, after "cosmetology", inserted "or manicuring"; and near end, after "required", substituted "training in a beauty school or manicuring school" for "apprenticeship or training in a shop or beauty school". Chapter 602 amendment effective January 1, 1986.

1981 Amendment: Substituted "a license to practice" for "operator's license" near the beginning of the first sentence of (1).

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-31-309 and 37-31-310 reserved.

37-31-311. *(Temporary)* **School of cosmetology — certificate of registration — requirements — bond — curriculum.** (1) No person, firm, partnership, or corporation may operate a school for the purpose of teaching cosmetology for compensation unless a certificate of registration has been first obtained from the department. Application for the certificate shall be filed with the department on a form prescribed by the board.

(2) No school for teaching cosmetology may be granted a certificate of registration unless it complies or can comply with the following requirements:

(a) It shall have in its employ a licensed teacher who is at all times in the immediate supervision of the work of the school, or other teachers the board determines are necessary for the proper conduct of the school. There may not be more than 25 students to each teacher.

(b) It shall possess apparatus and equipment the board determines is necessary for the ready and full teaching of all subjects or practices of cosmetology.

(c) It shall maintain a school term of not less than 2,000 hours and shall prescribe a course of practical training and technical instruction equal to the requirements for board examinations, which course of training and technical instruction shall be prescribed by the board.

(d) It shall keep a daily record of the attendance of each student, establish grades, and hold examinations before issuing diplomas.

(e) No owner or person in charge of a school of cosmetology may permit a person to sleep in or use for residential purposes, or any other purpose which would tend to make the room unsanitary, a room used wholly or in part for a school of cosmetology.

(3) Licenses or certificates of registration may be refused, revoked, or suspended, as provided in 37-31-331.

(4) No teacher or student teacher may be permitted to practice cosmetology on the public in a school. A school that enrolls student teachers for a course of student teacher training may not have, at any one time, more than one student teacher for each full-time licensed teacher actively engaged at the school. The student teachers may not substitute for full-time teachers.

(5) The board may make further rules necessary for the proper conduct of schools of cosmetology.

(6) The board shall require the person, firm, partnership, or corporation operating a school to furnish a good and sufficient bond in the amount of $5,000 and in a form and manner prescribed by the board.

(7) No professional beauty shop may be operated in connection with a school of cosmetology.

(8) The board may, by rule, establish a suitable curriculum for teachers' training in registered schools of cosmetology.

37-31-311. *(Effective January 1, 1986)* **Schools — certificate of registration — requirements — bond — curriculum.** (1) No person, firm, partnership, or corporation may operate a school for the purpose of teaching cosmetology for compensation or for the purpose of teaching manicuring for compensation unless a certificate of registration has been first obtained from the department. Application for the certificate shall be filed with the department on a form prescribed by the board.

(2) No school for teaching cosmetology may be granted a certificate of registration unless it complies or can comply with the following requirements:

(a) It shall have in its employ a licensed teacher who is at all times in the immediate supervision of the work of the school, or other teachers the board determines are necessary for the proper conduct of the school. There may not be more than 25 students to each teacher.

(b) It shall possess apparatus and equipment the board determines is necessary for the ready and full teaching of all subjects or practices of cosmetology.

(c) It shall maintain a school term of not less than 2,000 hours and shall prescribe a course of practical training and technical instruction equal to the requirements for board examinations, which course of training and technical instruction shall be prescribed by the board.

(d) It shall keep a daily record of the attendance of each student, establish grades, and hold examinations before issuing diplomas.

(e) No owner or person in charge of a school of cosmetology may permit a person to sleep in or use for residential purposes, or any other purpose which would tend to make the room unsanitary, a room used wholly or in part for a school of cosmetology.

(3) No school for teaching manicuring may be granted a certificate of registration unless it complies with subsections (2)(a) and (2)(d) and the following requirements:

(a) It must possess apparatus and equipment the board determines necessary for the ready and full teaching of all subjects or practices of manicuring.

(b) It must maintain a school term and a course of practical training and technical instruction as prescribed by the board.

(c) No owner or person in charge of a school of manicuring may permit a person to sleep in or use for residential purposes, or any other purpose that would tend to make the room unsanitary, a room used wholly or in part for a school of manicuring.

(4) Licenses or certificates of registration for schools of cosmetology and schools of manicuring may be refused, revoked, or suspended, as provided in 37-31-331.

(5) No teacher or student teacher may be permitted to practice cosmetology or manicuring on the public in a school of cosmetology or a school of manicuring. A school that enrolls student teachers for a course of student teacher training may not have, at any one time, more than one student teacher for each full-time licensed teacher actively engaged at the school. The student teachers may not substitute for full-time teachers.

(6) The board may make further rules necessary for the proper conduct of schools of cosmetology and schools of manicuring.

(7) The board shall require the person, firm, partnership, or corporation operating a school of cosmetology or a school of manicuring to furnish a good

and sufficient bond in the amount of $5,000 and in a form and manner prescribed by the board.

(8) No professional beauty shop or manicuring shop may be operated in connection with a school of cosmetology or school of manicuring.

(9) The board may, by rule, establish a suitable curriculum for teachers' training in registered schools of cosmetology.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(6) thru (8); amd. Sec. 9, Ch. 602, L. 1985.

Compiler's Comments

1985 Amendment: In (1) in first sentence, after "cosmetology for compensation", inserted "or for the purpose of teaching manicuring for compensation"; inserted (3); in (4) after "registration", inserted "for schools of cosmetology and schools of manicuring"; in (5), after "practice cosmetology" inserted "or manicuring" and after "a school" inserted "of cosmetology or a school of manicuring"; in (6) after "schools of cosmetology" inserted "and schools of manicuring"; in (7) after "a school" inserted "of cosmetology or a school of manicuring"; and in (8), after "beauty shop" inserted "or manicuring shop" and after "school of cosmetology" inserted "or school of manicuring". Amendment effective January 1, 1986.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-31-312. Inspection. (1) The department shall appoint one or more inspectors, each of whom shall devote his time to inspecting beauty parlors and performing other duties as the department may direct. The inspectors may enter a beauty parlor, manicuring shop, school of cosmetology, or school of manicuring during business hours for the purpose of inspection, and the refusal of a licensee to permit the inspection during business hours is cause for revocation of the license.

(2) Upon application for a license, any cosmetological establishment or manicuring shop must pay an initial inspection fee prescribed by the board.

(3) The board may authorize the department to grant to a cosmetological establishment or manicuring shop, upon payment of the initial inspection fee, a temporary permit authorizing the cosmetological establishment or manicuring shop to operate for a period of not to exceed 90 days or until the inspector is able to make the inspection, whichever event occurs first. This temporary permit is not renewable.

(4) The board shall conduct an annual inspection of each cosmetological establishment and manicuring shop in the state.

History: (1)En. Sec. 13, Ch. 104, L. 1929; re-en. Sec. 3228.13, R.C.M. 1935; amd. Sec. 11, Ch. 222, L. 1939; amd. Sec. 73, Ch. 350, L. 1974; Sec. 66-813, R.C.M. 1947; (2), (3)En. Sec. 66-813.1 by Sec. 2, Ch. 85, L. 1974; amd. Sec. 2, Ch. 305, L. 1977; Sec. 66-813.1, R.C.M. 1947; R.C.M. 1947, 66-813, 66-813.1; (4)En. Sec. 9, Ch. 106, L. 1981; amd. Sec. 56, Ch. 345, L. 1981; amd. Sec. 5, Ch. 260, L. 1985; amd. Sec. 10, Ch. 602, L. 1985.

Compiler's Comments

1985 Amendments: Chapters 260 and 602 in (1) in first sentence, after "inspectors", deleted "who are licensed to practice under this chapter".

Chapter 602 throughout section inserted references to manicuring shop; in (1), in second sentence, after "school of cosmetology", inserted "or school of manicuring"; and near end of (4) substituted "cosmetological establishment" for "cosmetology establishment". Chapter 602 amendment effective January 1, 1986.

1981 Amendments: Chapter 106 added subsection (4).

Chapter 345 substituted "an initial inspection fee prescribed by the board" for "an initial inspection fee of $25" at the end of (2).

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-31-313 through 37-31-320 reserved.

37-31-321. Issuance of licenses and certificates. If the board finds that an applicant for examination or for certificate of registration has complied with the requirements of this chapter and has paid the required fee, the board shall admit the applicant to examination and shall authorize the department to issue a license or certificate of registration to those who have successfully passed the examination or are entitled to the certificate of registration under this chapter.

History: En. Sec. 7, Ch. 104, L. 1929; re-en. Sec. 3228.7, R.C.M 1935; amd. Sec. 6, Ch. 222, L. 1939; amd. Sec. 68, Ch. 350, L. 1974; R.C.M. 1947, 66-807.

37-31-322. Renewal — continuing education — delinquency fee. (1) Licenses and certificates may be issued for no longer than 1 year unless otherwise provided by rule. Licenses and certificates expire on December 31 unless otherwise provided by rule or renewed for the next year or renewal period. Licenses and certificates may be renewed by application made prior to December 31 of each year, unless otherwise provided, and the payment of a required renewal fee. Expired licenses and certificates may be renewed under rules made by the board, but the right to renew an expired license or certificate terminates after 10 years of nonpayment. The board may provide by rule for a change in the renewal date and renewal period for the manager-operator and salon owner category. The renewal fee may not exceed twice the fee for a 2-year renewal or three times the fee for a 3-year renewal and shall be as set by the board.

(2) In addition to the foregoing requirements for renewal, persons applying for the renewal of licenses to teach cosmetology must have fulfilled the following additional requirements:

(a) During each year, an active teacher, either full-time or part-time, must have successfully completed 30 hours' professional teacher training at a school approved by the board.

(b) A person holding a license to teach cosmetology but not actively engaged either full-time or part-time in teaching cosmetology or manicuring during the preceding year may renew the license by paying the required fee. A person holding a license to teach cosmetology but not actively engaged in teaching cosmetology or manicuring either full-time or part-time for the preceding year or longer and wishing to resume active teaching of cosmetology or manicuring must successfully complete 30 hours' professional teacher training at a school approved by the board before resuming active teaching. However, the foregoing provisions do not prevent the board, under rules it adopts, from permitting a person holding a license to teach cosmetology and not actively engaged either full-time or part-time in teaching cosmetology or manicuring from teaching as a substitute for an active teacher.

(3) A fee prescribed by the board shall be charged, in addition to other fees fixed by law, for renewal applications of licenses and certificates made after December 31 of each year or other predetermined renewal deadline.

History: En. Sec. 16, Ch. 104, L. 1929; re-en. Sec. 3228.16, R.C.M. 1935; amd. Sec. 13, Ch. 222, L. 1939; amd. Sec. 1, Ch. 115, L. 1961; amd. Sec. 1, Ch. 132, L. 1967; amd. Sec. 75, Ch. 350, L. 1974; amd. Sec. 3, Ch. 305, L. 1977; R.C.M. 1947, 66-816; amd. Sec. 16, Ch. 22, L. 1979; amd. Sec. 57, Ch. 345, L. 1981; amd. Sec. 6, Ch. 260, L. 1985; amd. Sec. 11, Ch. 602, L. 1985.

Compiler's Comments

1985 Amendments: Chapters 260 and 602 in (3) deleted former second sentence that read: "The department shall notify license and certificate holders of the expiration date of licenses and certificates not less than 30 days before the expiration date and call attention to the penalty imposed for failure to renew a license or certificate by the date of expiration."

Chapter 602 throughout section substituted "license(s) to teach cosmetology" for "teacher's license(s)"; in (2)(b) in four places, after "teaching cosmetology", inserted "or manicuring". Chapter 602 amendment effective January 1, 1986.

1981 Amendment: Substituted "a fee prescribed by the board" for "a fee of $10" at the beginning of (3).

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-31-323. Fees. (1) Fees for licenses and certificates of registration shall be paid to the department in amounts prescribed by the board.

(2) The license and registration fees shall be paid annually, unless otherwise provided by board rule, in advance to the department.

(3) No other or additional license or registration fee may be imposed by a municipal corporation or other political subdivision of this state for the practice or teaching of cosmetology.

History: En. Sec. 15, Ch. 104, L. 1929; re-en. Sec. 3228.15, R.C.M. 1935; amd. Sec. 12, Ch. 222, L. 1939; amd. Sec. 3, Ch. 80, L. 1941; amd. Sec. 3, Ch. 20, L. 1955; amd. Sec. 2, Ch. 140, L. 1959; amd. Sec. 1, Ch. 131, L. 1963; amd. Sec. 1, Ch. 324, L. 1971; amd. Sec. 74, Ch. 350, L. 1974; amd. Sec. 4, Ch. 533, L. 1977; R.C.M. 1947, 66-815; amd. Sec. 10, Ch. 106, L. 1981; amd. Sec. 58, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendments:

Chapter 106, deleted subsection (1)(e) relating to a license fee for an operator.

Chapter 345, substituted "shall be paid to the department in amounts prescribed by the board" for "shall be paid to the department not to exceed the following respective amounts prescribed by the board" in the first sentence of (1); and deleted subsections (1)(a) through (1)(n) which set maximum fees for various licenses and certificates of registration.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-31-324. Deposit of fees. All fees collected by the department unde this chapter shall be deposited in the state special revenue fund for the us of the board, subject to 37-1-101(6).

History: En. Sec. 9, Ch. 104, L. 1929; re-en. Sec. 3228.9, R.C.M. 1935; amd. Sec. 8, Ch. 222 L. 1939; amd. Sec. 135, Ch. 147, L. 1963; amd. Sec. 1, Ch. 133, L. 1967; amd. Sec. 1, Ch. 224 L. 1974; amd. Sec. 70, Ch. 350, L. 1974; amd. Sec. 28, Ch. 439, L. 1975; amd. Sec. 1, Ch. 531 L. 1977; R.C.M. 1947, 66-809(part); amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

37-31-325 through 37-31-330 reserved.

37-31-331. *(Temporary)* **Refusal, revocation, or suspension o licenses — grounds — notice and hearing.** (1) The board may refuse t issue, refuse to renew, or may revoke or suspend a license in any one of th following cases:

(a) failure of a person, firm, partnership, or corporation operating cosmetological establishment or school of cosmetology to comply with thi chapter;

(b) failure to comply with the sanitary rules adopted by the board an approved by the department of health and environmental sciences for th regulation of cosmetological establishments or schools of cosmetology;

(c) gross malpractice;

(d) continued practice by a person knowingly having an infectious or con- agious disease;

(e) habitual drunkenness or habitual addiction to the use of morphine or ny habit-forming drug;

(f) permitting a certificate of registration or license to be used where the older is not personally, actively, and continuously engaged in business; or

(g) failure to display the license.

(2) However, the board may not refuse to authorize the department to ssue or renew a license or revoke or suspend a license already issued until fter notice and opportunity for a hearing.

37-31-331. *(Effective January 1, 1986)* **Refusal, revocation, or sus- ension of licenses — grounds — notice and hearing.** (1) The board ay refuse to issue, refuse to renew, or may revoke or suspend a license in ny one of the following cases:

(a) failure of a person, firm, partnership, or corporation operating a osmetological establishment, manicuring shop, school of cosmetology, or chool of manicuring to comply with this chapter;

(b) failure to comply with the sanitary rules adopted by the board and pproved by the department of health and environmental sciences for the egulation of cosmetological establishments, manicuring shops, schools of cos- etology, or schools of manicuring;

(c) gross malpractice;

(d) continued practice by a person knowingly having an infectious or con- agious disease;

(e) habitual drunkenness or habitual addiction to the use of morphine or ny habit-forming drug;

(f) permitting a certificate of registration or license to be used where the older is not personally, actively, and continuously engaged in business; or

(g) failure to display the license.

(2) However, the board may not refuse to authorize the department to ssue or renew a license or revoke or suspend a license already issued until fter notice and opportunity for a hearing.

History: En. Sec. 11, Ch. 104, L. 1929; re-en. Sec. 3228.11, R.C.M. 1935; amd. Sec. 10, Ch. 22, L. 1939; amd. Sec. 71, Ch. 350, L. 1974; R.C.M. 1947, 66-811; amd. Sec. 12, Ch. 602, L. 985.

ompiler's Comments

1985 Amendment: In (1)(a) and (1)(b), before chool(s) of cosmetology" inserted "manicuring op(s)" and after "school(s) of cosmetology" serted "or school(s) of manicuring". Amend- ent effective January 1, 1986.

ross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part

Unfair trade practices and consumer protec- on, Title 30, ch. 14.

Duty of Department to investigate unprofes- onal conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-31-332. Suspension for contracting communicable disease. If a censee contracts a communicable disease endangering the public health, the board shall, on proof of it, cancel or suspend his license until the licensee can secure a physician's certificate showing that he is free from a communicable disease.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(9).

37-31-333. Appeal from actions of board. An appeal may be taken from any actions of the board to the district court of the county in which the applicant resides.

History: En. Sec. 14, Ch. 104, L. 1929; re-en. Sec. 3228.14, R.C.M. 1935; R.C.M. 1947, 66-814.

Cross-References

Judicial review of contested cases, Title 2, ch. 4, part 7.

37-31-334. Penalty — injunction. (1) The commission of any of the acts prohibited as provided in 37-31-301 or the violation of any other provision in this chapter shall be a misdemeanor punishable by a fine or imprisonment or both fine and imprisonment.

(2) Regardless of any penalties provided in this chapter and as an additional remedy, the district courts of the state of Montana are vested with jurisdiction to restrain and enjoin any violation or threatened violation of the requirements of this chapter as a nuisance per se or otherwise and the board the attorney general, or any county attorney may institute proceedings in equity for the purpose of obtaining equitable relief against violations of the provisions of this chapter.

History: En. Sec. 17, Ch. 104, L. 1929; amd. Sec. 1, Ch. 13, L. 1931; re-en. Sec. 3228.17 R.C.M. 1935; amd. Sec. 14, Ch. 222, L. 1939; amd. Sec. 1, Ch. 140, L. 1959; R.C.M. 1947 66-817(C), (D).

Cross-References

Duties of Attorney General, 2-15-501.

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25 ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Nuisances, Title 27, ch. 30.

Disciplinary authority of boards — injunctions, 37-1-136.

Penalty when none specified, 46-18-212.

CHAPTER 32

ELECTROLOGY

Part 1 — General

Section

37-32-101. Purpose.
37-32-102. Definitions.
37-32-103. Exemptions.

Part 2 — Board of Cosmetologists

37-32-201. Rulemaking power.

Part 3 — Licensing

37-32-301. License required.
37-32-302. Qualifications — examination — issuance of license.
37-32-303. Reciprocity.
37-32-304. Electrology salon or school license required.
37-32-305. Fees — renewal — deposit of moneys collected.
37-32-306. Inspection.
37-32-307 through 37-32-309 reserved.
37-32-310. Refusal, revocation, or suspension of licenses — grounds — notice and hearing.
37-32-311. Penalty.

Part 1

General

37-32-101. Purpose. The legislature finds and declares that the practice of electrology in Montana affects the public health, safety, and welfare and should therefore be subject to regulation and control in the public interest in order to protect the public from the unauthorized and unqualified practice of electrology.

History: En. 66-3601 by Sec. 1, Ch. 143, L. 1975; R.C.M. 1947, 66-3601.

37-32-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Approved school" means a school which the board has approved as having a course of instruction or education and training in electrology which meets the criteria established by the board.

(2) "Board" means the board of cosmetologists.

(3) "Department" means the department of commerce.

(4) "Electrology" means the study and professional practice of permanently removing superfluous hair by destroying the hair roots by passage of an electric current with an electrified needle. Electrology as defined in this chapter shall include electrolysis and/or thermolysis. Electrology does not include the practice of pilethermology, which is the study and professional practice of removing superfluous hair by passage of radio frequency energy with electronic tweezers and similar devices.

History: En. 66-3602 by Sec. 2, Ch. 143, L. 1975; R.C.M. 1947, 66-3602; amd. Sec. 1, Ch. 82, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 412, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 274 substituted "department of commerce" for "department of professional and occupational licensing" in subsection (3).

Chapter 412 inserted "permanently" before "removing" and added "with an electrified needle" in first sentence of subsection (4); and added last sentence in subsection (4) relating to pilethermology.

37-32-103. Exemptions. Nothing in this chapter prevents a licensed medical doctor from performing the work of an electrologist.

History: En. 66-3603 by Sec. 3, Ch. 143, L. 1975; R.C.M. 1947, 66-3603(2); amd. Sec. 11, Ch. 06, L. 1981.

Compiler's Comments

1981 Amendment: Deleted former subsection (2) that read: "a person employed by a federal, state, county, city, or other political subdivision or by an educational or charitable institution from performing the work of an electrologist".

Part 2

Board of Cosmetologists

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1857.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-32-201. Rulemaking power. (1) The board may adopt rules in accordance with the Montana Administrative Procedure Act to implement this chapter and to properly regulate this profession.

(2) Rules adopted by the board may provide for:

(a) the conduct of board business;

(b) the qualifications, examination, and licensure of applicants to practice or teach electrology;

(c) standards and requirements for licensure of premises to be used for the practice or teaching of electrology;

(d) the curriculum and conduct of schools of electrology;

(e) sanitary standards for licensees, salons, and schools, with particular reference to the precautions necessary to prevent the creation and spread of infectious and contagious diseases; and

(f) the conduct of persons, salons, and schools licensed under this chapter.

History: En. 66-3607 by Sec. 7, Ch. 143, L. 1975; amd. Sec. 32, Ch. 101, L. 1977; R.C.M. 1947, 66-3607(1); amd. Sec. 1, Ch. 40, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (2).

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Duties of boards, 37-1-131.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-32-301. License required. (1) No person may represent himself to be an electrologist or engage in the practice or teaching of electrology unless he is licensed under this chapter.

(2) Applications for licensure or renewal of a license must be made to the department on forms provided by the department. The application must be accompanied by the appropriate fee.

History: En. 66-3603 by Sec. 3, Ch. 143, L. 1975; R.C.M. 1947, 66-3603(1); amd. Sec. 2, Ch. 40, L. 1985.

Compiler's Comments

1985 Amendment: In (1) after "practice", inserted "or teaching"; and inserted (2).

37-32-302. Qualifications — examination — issuance of license. (1) Before a license to practice electrology is granted, the applicant shall meet all of the following requirements:

(a) be at least 18 years of age;

(b) furnish satisfactory evidence of education, instruction, training, and experience in the field of electrology as the board may fix by rule;

(c) pass an examination to the satisfaction of the board in the field of electrology if it is required by the board.

(2) The department shall issue the electrologist license only after it is granted by the board and all requirements of this chapter have been met.

History: En. 66-3604 by Sec. 4, Ch. 143, L. 1975; R.C.M. 1947, 66-3604.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

License investigation and review — record access, 37-1-135.

37-32-303. Reciprocity. Reciprocal electrology licenses may be granted by the board where the individual has a valid license from another state and has fulfilled requirements of this profession similar to those provided in this chapter.

History: En. 66-3606 by Sec. 6, Ch. 143, L. 1975; R.C.M. 1947, 66-3606.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-32-304. Electrology salon or school license required. (1) The premises in which an electrologist or electrologists may practice must be licensed in accordance with rules adopted by the board. Rules adopted by the board shall provide for equipment standards and sanitary rules so that the health of the individual patron is properly protected.

(2) The premises in which electrology is taught must be licensed in accordance with rules adopted by the board pursuant to 37-32-201.

(3) Applications for licensure or renewal under this section must be made to the department on forms provided by the department. Applications must be accompanied by the proper licensure or renewal fee and the inspection fee required by 37-32-306.

History: En. 66-3605 by Sec. 5, Ch. 143, L. 1975; R.C.M. 1947, 66-3605; amd. Sec. 3, Ch. 0, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (2) and (3).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-32-305. Fees — renewal — deposit of moneys collected. (1) The fee for an original electrologist license shall be set by the board. The renewal shall be automatic, unless revoked or suspended for cause, and the renewal fee shall be set by the board.

(2) The fee for an original electrologist salon license shall be the same as that for cosmetology salons. The renewal fee shall be the same as that for cosmetology salons.

(3) All licenses issued under this chapter expire on December 31 and shall be renewed annually. Failure to renew on or before December 31 shall cause late renewal fee prescribed by the board to be added to the regular renewal fee. The right to renew by payment of the late renewal fee expires after 3 years of nonpayment.

(4) All fees or moneys collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board in administration of the chapter.

History: En. 66-3608 by Sec. 8, Ch. 143, L. 1975; amd. Sec. 11, Ch. 533, L. 1977; R.C.M. 1947, 66-3608; amd. Sec. 59, Ch. 345, L. 1981; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

1981 Amendment: Substituted "an original electrologist license shall be set by the board" for "an original electrologist license shall not exceed $50 as set by the board" in the first sentence of (1); and substituted "a late renewal fee prescribed by the board" for "a late renewal fee of $10" in the second sentence of (3).

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-32-306. Inspection. (1) The department shall appoint inspectors to inspect electrology schools and salons and perform other duties as the department may direct. Inspectors may enter electrology salons and schools during business hours for the purpose of evaluating whether the premises qualify for licensure or otherwise meet standards established by the board.

(2) Upon application for issuance of a license, an electrology salon or school shall pay an inspection fee prescribed by the board.

(3) The board may authorize the department to grant an electrology salon or school, upon payment of an inspection fee, a temporary permit authorizing the electrology establishment to operate for a period of not to exceed 90 days or until an inspector is able to make the inspection, whichever event occurs first. This temporary permit is not renewable.

(4) The board may conduct periodic inspections of electrology salons and schools within this state to determine compliance with this chapter and rules adopted to implement it.

History: En. Sec. 4, Ch. 40, L. 1985.

37-32-307 through 37-32-309 reserved.

37-32-310. Refusal, revocation, or suspension of licenses — grounds — notice and hearing. (1) The board may deny, refuse to renew revoke, suspend, or take other disciplinary action against a licensee in any o the following cases:

(a) failure of a person, firm, partnership, or corporation operating an electrology salon or school of electrology to comply with this chapter or rule adopted under this chapter;

(b) failure to comply with sanitary rules adopted by the board for th regulation of electrology salons or schools of electrology;

(c) gross malpractice or repeated malpractice;

(d) continued practice by a person knowingly having an infectious or contagious disease;

(e) habitual drunkenness or addiction to any habit-forming drug;

(f) permitting a license to be used when the holder is not personally actively, and continuously engaged in business;

(g) unprofessional conduct as defined by rules of the board; or

(h) failure to display the license.

(2) Title 2, chapter 4, part 6, applies to all contested cases under this chapter.

History: En. Sec. 5, Ch. 40, L. 1985.

37-32-311. Penalty. Violation of this chapter or of the rules adopted under it is a misdemeanor punishable by a fine, imprisonment, or by both fine and imprisonment.

History: En. 66-3607 by Sec. 7, Ch. 143, L. 1975; amd. Sec. 32, Ch. 101, L. 1977; R.C.M. 1947, 66-3607(2).

Cross-References

Reporting disciplinary actions against licensees, 37-1-105.

Disciplinary authority of boards — injunctions, 37-1-136.

Penalty when none specified, 46-18-212.

CHAPTER 33

MASSAGE THERAPY
(Repealed. Sec. 7, Ch. 84, L. 1983)

Chapter Compiler's Comments

Histories of Repealed Sections:

37-33-101. En. Sec. 1, Ch. 302, L. 1967; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2901.

37-33-102. En. Sec. 2, Ch. 302, L. 1967; amd. Sec. 1, Ch. 321, L. 1974; amd. Sec. 283, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2902.

37-33-103. En. Sec. 14, Ch. 302, L. 1967; amd. Sec. 8, Ch. 321, L. 1974; R.C.M. 1947, 66-2914; amd. Sec. 1, Ch. 32, L. 1979.

37-33-104. En. Sec. 8, Ch. 302, L. 1967; amd. Sec. 5, Ch. 321, L. 1974; amd. Sec. 289, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2908(part).

37-33-201. En. Sec. 4, Ch. 302, L. 1967; amd. Sec. 1, Ch. 243, L. 1973; amd. Sec. 2, Ch. 321, L. 1974; amd. Sec. 285, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2904(1), (2).

37-33-202. En. Sec. 10, Ch. 302, L. 1967; amd. Sec. 7, Ch. 321, L. 1974; amd. Sec. 291, Ch. 350, L. 1974; amd. Sec. 43, Ch. 439, L. 1975; R.C.M. 1947, 66-2910(3), (4); amd. Sec. 26, Ch. 474, L. 1981.

37-33-203. En. Sec. 11, Ch. 302, L. 1967; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2911.

37-33-204. En. Sec. 4, Ch. 302, L. 1967; amd. Sec. 1, Ch. 243, L. 1973; amd. Sec. 2, Ch. 321, L. 1974; amd. Sec. 285, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2904(3).

37-33-301. En. Sec. 5, Ch. 302, L. 1967; amd. Sec. 3, Ch. 321, L. 1974; amd. Sec. 286, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2905(1).

37-33-302. En. Sec. 6, Ch. 302, L. 1967; amd. Sec. 4, Ch. 321, L. 1974; amd. Sec. 287, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2906; amd. Sec. 60, Ch. 345, L. 1981.

37-33-303. En. Sec. 5, Ch. 302, L. 1967; amd. Sec. 3, Ch. 321, L. 1974; amd. Sec. 286, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2905(2).

37-33-304. En. Sec. 7, Ch. 302, L. 1967; amd. Sec. 288, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2907.

37-33-305. En. Sec. 12, Ch. 302, L. 1967; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2912; amd. Sec. 61, Ch. 345, L. 1981.

37-33-306. En. Sec. 9, Ch. 302, L. 1967; amd. Sec. 6, Ch. 321, L. 1974; amd. Sec. 290, Ch. 350, L. 1974; amd. Sec. 10, Ch. 533, L. 1977; R.C.M. 1947, 66-2909; amd. Sec. 2, Ch. 32, L. 1979; amd. Sec. 62, Ch. 345, L. 1981.

37-33-307. En. Sec. 10, Ch. 302, L. 1967; amd. Sec. 7, Ch. 321, L. 1974; amd. Sec. 291, Ch. 350, L. 1974; amd. Sec. 43, Ch. 439, L. 1975; R.C.M. 1947, 66-2910(1), (2).

37-33-308 through 37-33-310 reserved.

37-33-311. En. Sec. 8, Ch. 302, L. 1967; amd. Sec. 5, Ch. 321, L. 1974; amd. Sec. 289, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2908(part).

37-33-312. En. Sec. 13, Ch. 302, L. 1967; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2913.

CHAPTERS 34 THROUGH 39

RESERVED

CHAPTER 40

SANITARIANS

Part 1 — General

Section
37-40-101. Definitions.
37-40-102. Exemptions.

Part 2 — Board of Sanitarians

37-40-201. Chairman — meetings.
37-40-202. Compensation — expenses.
37-40-203. Rulemaking power.

Part 3 — Licensing

37-40-301. License required.
37-40-302. Application — examination — certificate.
37-40-303. Licensing sanitarians from other states.
37-40-304. Fees — renewal.
37-40-305. Deposit of fees.
37-40-306. Prior registration as sanitarian still valid.
37-40-307. Sanitarian practicing prior to effective date.
37-40-308 through 37-40-310 reserved.
37-40-311. Suspension or revocation of license.
37-40-312. Penalty.

Chapter Cross-References

Publicly employed sanitarians to cooperate concerning water quality, 75-5-106.

Cooperation of sanitarians with Board of Health and Environmental Sciences, 76-4-106.

Cooperative agreements between sanitarians and Department of Livestock, 81-22-305.

Part 1

General

37-40-101. Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) "Board" means the board of sanitarians provided for in 2-15-1861.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Registered sanitarian" means a sanitarian licensed under this chapter.

(4) "Sanitarian", within the meaning and intent of this chapter, shall mean a person who, by reason of his special knowledge of the physical, biological, and chemical sciences and the principles and methods of public health acquired by professional education and practical experience through inspectional, educational, and/or enforcement duties, is qualified to practice the profession of sanitarian.

(5) "Practice the profession of sanitarian" means planning, inspectional, educational, or enforcement duties in the field of environmental sanitation.

History: En. 69-3410 by Sec. 1, Ch. 314, L. 1974; R.C.M. 1947, 69-3410(1) thru (5); amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

37-40-102. Exemptions. Persons exempt from the requirements of this chapter, unless practicing the profession of sanitarian, are:

(1) any person teaching, lecturing, or engaging in research in environmental sanitation, but only insofar as such activities are performed as part of an academic position in a college or university;

(2) any person who is a sanitary engineer, public health engineer, registered professional engineer, or engineer-in-training;

(3) any public health officer employed pursuant to 50-2-116; and

(4) any person employed by a federal governmental agency, but only at such times as the person is carrying out the functions of his employment.

History: En. 69-3410 by Sec. 1, Ch. 314, L. 1974; R.C.M. 1947, 69-3410(6).

Part 2

Board of Sanitarians

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1861.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-40-201. Chairman — meetings. The board shall appoint one of its members chairman. The board shall meet at least once annually and at such other times as agreed upon. The board shall not meet more than four times a year.

History: En. 69-3414 by Sec. 5, Ch. 314, L. 1974; amd. Sec. 16, Ch. 453, L. 1977; R.C.M. 1947, 69-3414(2).

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Duty of Department to provide facilities, 37-1-101.

Disrupting meeting as disorderly conduct, 45-8-101.

37-40-202. Compensation — expenses. Members of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. 69-3414 by Sec. 5, Ch. 314, L. 1974; amd. Sec. 16, Ch. 453, L. 1977; R.C.M. 1947, 69-3414(1); amd. Sec. 27, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Substituted section for "Members of the board shall receive compensation of $25 a day plus travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, while engaged in business of the board".

37-40-203. Rulemaking power. (1) The board may adopt rules consistent with this chapter for its administration.

(2) The board's rulemaking and hearing functions shall be in accordance with the Montana Administrative Procedure Act.

History: En. 69-3418 by Sec. 9, Ch. 314, L. 1974; R.C.M. 1947, 69-3418(1), (3).

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Duties of boards, 37-1-131.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-40-301. License required. A person may not practice the profession of a sanitarian or hold himself out to be a sanitarian unless he is licensed under this chapter.

History: En. 69-3411 by Sec. 2, Ch. 314, L. 1974; R.C.M. 1947, 69-3411.

37-40-302. Application — examination — certificate. (1) A person wishing to practice the profession of sanitarian may apply to the department for registration on a form prescribed by the board.

(2) An applicant must possess a minimum of a bachelor's degree in environmental health or its equivalent from an accredited university or college and must pass an examination given at a time and place set by the board.

(3) If the applicant meets the board's standards and passes the examination prescribed by the board, the department shall issue a certificate of registration upon payment of the required fee.

(4) Holders of current certificates shall be entitled to append to their name the initials "R.S.".

History: En. 69-3415 by Sec. 6, Ch. 314, L. 1974; R.C.M. 1947, 69-3415; amd. Sec. 4, Ch. 149, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "possess a minimum of a bachelor's degree in environmental health or its equivalent from an accredited university or college" for "meet minimum standards set by the board" in (2); deleted "but not to exceed 1 year past the date of issuance of the probationary certificate described in subsection (3) below" at the end of (2); deleted subsection (3).

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Licensing investigation and review — record access, 37-1-135.

37-40-303. Licensing sanitarians from other states. The department shall issue a license without examination to a person who applies to the department, pays a fee prescribed by the board, and submits satisfactory proof to the board that:

(1) he is of good moral character; and

(2) he is registered or licensed as a sanitarian in a state which has requirements comparable to those in this state.

History: En. 69-3419 by Sec. 10, Ch. 314, L. 1974; R.C.M. 1947, 69-3419; amd. Sec. 5, Ch. 149, L. 1981; amd. Sec. 63, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Chapter 345 substituted "pays a fee prescribed by the board" for "pays a fee of $35" in the middle of the introductory sentence.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-40-304. Fees — renewal. (1) An applicant for a license shall pay a fee set by the board in an amount commensurate with examination and administrative costs.

(2) A registered sanitarian may renew his license by paying an annual fee set by the board.

(3) Renewal fees are due July 1 of the renewal year. If the renewal fee is not paid, the license expires. Licenses which have lapsed for failure to pay renewal fees may be reissued under rules adopted by the board.

History: En. 69-3416 by Sec. 7, Ch. 314, L. 1974; amd. Sec. 12, Ch. 533, L. 1977; R.C.M. 1947, 69-3416; amd. Sec. 6, Ch. 149, L. 1981; amd. Sec. 64, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Chapter 345 deleted ", not to exceed $10" after "an annual fee set by the board" at the end of (2).

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-40-305. Deposit of fees. All fees collected by the department shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. 69-3417 by Sec. 8, Ch. 314, L. 1974; R.C.M. 1947, 69-3417; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

37-40-306. Prior registration as sanitarian still valid. All persons previously registered under Chapter 174, Laws of 1959, are registered sanitarians for purposes of this chapter.

History: En. 69-3421 by Sec. 12, Ch. 314, L. 1974; R.C.M. 1947, 69-3421.

37-40-307. Sanitarian practicing prior to effective date. A person having practiced as a sanitarian, as defined by 37-40-101(5), for 1 year prior to July 1, 1981, may be registered as a sanitarian upon making application and paying the required fee.

History: En. 69-3422 by Sec. 13, Ch. 314, L. 1974; R.C.M. 1947, 69-3422; amd. Sec. 17, Ch. 22, L. 1979; amd. Sec. 7, Ch. 149, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "1981" for "1974".

37-40-308 through 37-40-310 reserved.

37-40-311. Suspension or revocation of license. (1) The board may suspend or revoke a license for the following reasons:

(a) unprofessional conduct;

(b) fraud and deceit in obtaining a license;

(c) gross negligence, incompetency, or misconduct in the practice as a sanitarian; or

(d) the conviction of a crime involving moral turpitude.

(2) Any person may bring charges of fraud, deceit, gross negligence, incompetency, or misconduct against a registrant. The charges shall be made by affidavit, subscribed and sworn to by the person making them, and filed with the department. Charges, unless dismissed by the board as unfounded or trivial, must be heard by the board within 3 months after the date on which they were made.

(3) The board may require a registrant to take a written or oral examination, or both, in a proceeding to reprimand or to revoke, suspend, or refuse to renew a license.

(4) If, after a hearing, a majority of the board votes in favor of sustaining the charges, the board shall reprimand or suspend, refuse to renew, or revoke the certificate of registration of the professional sanitarian.

(5) The board, for reasons it considers sufficient, may reissue a certificate of registration to a person whose certificate has been revoked if a majority of the members of the board vote in favor of the reissuance. A new certificate of registration, to replace a certificate revoked, lost, destroyed, or mutilated, may be issued by the department, subject to the rules of the board.

History: En. 69-3418 by Sec. 9, Ch. 314, L. 1974; R.C.M. 1947, 69-3418(2); amd. Sec. 8, Ch. 149, L. 1981.

Compiler's Comments

1981 Amendment: Redesignated subsections (1) through (4) as (1)(a) through (1)(d); added subsections (2) through (5).

Cross-References

Oath defined, 1-1-201.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Licensing to follow contested case procedure, 2-4-631.

Affidavits, Title 26, ch. 1, part 10.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-40-312. Penalty. A person who offers his services as a sanitarian or uses, assumes, or advertises in any way any title or description tending to convey the impression that he is a sanitarian who does not hold the license specified by this chapter is guilty of a misdemeanor and is punishable by a fine not to exceed $500 or imprisonment for not longer than 6 months, or both.

History: En. 69-3420 by Sec. 11, Ch. 314, L. 1974; R.C.M. 1947, 69-3420.

CHAPTER 41

CESSPOOL, SEPTIC TANK, AND PRIVY CLEANERS

Part 1 — General

Section
37-41-101. License required.
37-41-102. Repealed.

37-41-103. Rulemaking power of department.
37-41-104. Definitions.
37-41-105. Exclusions.

Part 2 — Licensing

37-41-201. Application for license — form and contents.
37-41-202. Licenses — nontransferability — fees.
37-41-203. Repealed.
37-41-204. Repealed.
37-41-205 through 37-41-210 reserved.
37-41-211. Denial, suspension, or revocation of license.
37-41-212. Enforcement responsibility — penalty — deposit of fines.

Part 1

General

37-41-101. License required. No person may engage in the business of cleaning cesspools, septic tanks, or privies and disposal of septage therefrom unless licensed by the department.

History: En. Sec. 193, Ch. 197, L. 1967; amd. Sec. 1, Ch. 76, L. 1971; amd. Secs. 105, 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5401(part); amd. Sec. 2, Ch. 556, L. 1983.

Compiler's Comments

1983 Amendment: At beginning, substituted "No person may engage in the business" for "No person, partnership, firm or corporation shall engage in the business"; in middle substituted "disposal of septage" for "disposal of waste"; and at end, after "department" deleted "of health and environmental sciences and the license is validated by the health officer or local sanitarian in each county where business is to be conducted".

37-41-102. Repealed. Sec. 12, Ch. 556, L. 1983.

History: En. Sec. 199, Ch. 197, L. 1967; amd. Sec. 6, Ch. 76, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5407; amd. Sec. 18, Ch. 22, L. 1979.

37-41-103. Rulemaking power of department. The department shall adopt necessary rules for the implementation of the provisions of this chapter, including rules pertaining to:

(1) licensure but not operation of septic tank, cesspool, and privy cleaning businesses; and

(2) requirements for temporary and permanent sites for disposal of septage.

History: En. Sec. 198, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5406; amd. Sec. 3, Ch. 556, L. 1983.

Compiler's Comments

1983 Amendment: Substituted existing text for "The department shall adopt necessary rules for carrying out the provisions of this chapter."

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-41-104. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(3) "Disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of septage into or onto the land or water.

(4) "Person" means an individual, firm, partnership, association, corporation, city, town, local government entity, or other government or private entity, whether organized for profit or not.

(5) "Septage" means waste material from cesspools, septic tanks, or privies.

History: En. Sec. 1, Ch. 556, L. 1983.

37-41-105. Exclusions. This chapter does not prohibit the owner or lessee of the property from which the septage was removed from disposing or contracting for the disposal of his own septage upon land owned or leased by him if it does not create a nuisance or public health hazard.

History: En. Sec. 8, Ch. 556, L. 1983.

Cross-References

Nuisances, Title 27, ch. 30.

Part 2

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-41-201. Application for license — form and contents. Application for a license is made to the department on application forms provided by the department. The application shall contain:

(1) the full name and business address of each applicant;

(2) a list of the counties in which business is to be conducted; and

(3) certification by a local health officer or his designated representative in each county in which the applicant's business is to be conducted that proposed disposal sites to be used by the applicant meet all applicable state and local requirements.

History: En. Sec. 194, Ch. 197, L. 1967; amd. Sec. 2, Ch. 76, L. 1971; amd. Secs. 107, 109, Ch. 349, L. 1974; R.C.M. 1947, 69-5402; amd. Sec. 4, Ch. 556, L. 1983.

Compiler's Comments

1983 Amendment: Substituted existing text for "Application for a license is made to the department on application forms procured from the local health officer or sanitarian in the county of applicant's residence. The application shall show:

(1) the name in full and, if a partnership, the name of each partner;

(2) place of business and the counties in which business is to be conducted;

(3) place of residence of the applicant or applicants;

(4) number of units and type of equipment to be used;

(5) a statement that the applicant will comply with rules adopted by the department under this chapter;

(6) the signature of the individual, authorized officer of the firm or corporation, or managing partner of the partnership applying."

37-41-202. Licenses — nontransferability — fees. (1) Licenses expire on December 31 of each calendar year. Licenses are not transferable. If a licensee ceases to do business, the license shall be surrendered to the department.

(2) The fee for each license is $25, payable at the time of application for license. A federal agency, city, town, or other political subdivision is not required to pay the license fee, but such agency, including a federal agency if allowed by federal law, shall comply with all other requirements of this chapter. The department shall annually return 80% of the fees collected from a county to that county. The state portion of the fee shall be deposited in the state general fund. The county portion of the fee shall be used to defer cost of the county to enforce this chapter.

History: En. Sec. 195, Ch. 197, L. 1967; amd. Sec. 3, Ch. 76, L. 1971; amd. Sec. 109, Ch. 349, L. 1974; R.C.M. 1947, 69-5403; amd. Sec. 5, Ch. 556, L. 1983.

Compiler's Comments

1983 Amendment: Substituted existing text for "(1) Licenses issued by the department shall be titled "Montana Sanitary Licensee" and numbered consecutively beginning with the number 10. Licenses expire on December 31 of each calendar year. Licenses are not transferable.

(2) The fee for each license is $25, payable at the time of application for license. Twenty dollars of the fee shall be deposited with the county treasurer in the county of licensee residence and $5 forwarded with the application to the department. The state fee shall be deposited in the state general fund. The county portion of the fee shall be used to defer cost of a sanitarian to enforce this chapter. The department shall return the license to county of licensee residence for issue."

37-41-203. Repealed. Sec. 12, Ch. 556, L. 1983.

History: En. Sec. 196, Ch. 197, L. 1967; amd. Sec. 4, Ch. 76, L. 1971; R.C.M. 1947, 69-5404.

37-41-204. Repealed. Sec. 12, Ch. 556, L. 1983.

History: En. Sec. 197, Ch. 197, L. 1967; amd. Sec. 5, Ch. 76, L. 1971; R.C.M. 1947, 69-5405.

37-41-205 through 37-41-210 reserved.

37-41-211. Denial, suspension, or revocation of license. The department may deny, suspend, or revoke a license for noncompliance with this chapter or rules adopted by the department. Upon denial, suspension, or revocation, the applicant or licensee may request a hearing within 30 days after receipt of a written notice of the department's action. The hearing must be held before the board and in accordance with the Montana Administrative Procedure Act.

History: En. Sec. 193, Ch. 197, L. 1967; amd. Sec. 1, Ch. 76, L. 1971; amd. Secs. 105, 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5401(part); amd. Sec. 6, Ch. 556, L. 1983.

Compiler's Comments

1983 Amendment: At beginning deleted "of health and environmental sciences" after "the department"; after first sentence inserted remainder of the section.

37-41-212. Enforcement responsibility — penalty — deposit of fines. (1) State and local health officers shall enforce this chapter.

(2) A person who violates this chapter or a rule of the department is guilty of a misdemeanor and upon conviction shall be fined not more than $500.

(3) All fines collected under this section shall be deposited in the general fund of the county in which the action is brought.

History: En. Sec. 200, Ch. 197, L. 1967; amd. Sec. 7, Ch. 76, L. 1971; R.C.M. 1947, 69-5408; amd. Sec. 7, Ch. 556, L. 1983.

Compiler's Comments

1983 Amendment: Substituted existing text for "State and local health officers or sanitarians are responsible for the enforcement of this chapter. Any person who fails to comply with provisions of this chapter or orders of a health officer or sanitarian made under this chapter for the protection of human health is guilty of a misdemeanor. Upon conviction he shall be fined not more than $100, imprisoned for not more than 30 days, or both, for each offense. Fines collected shall be deposited in the general fund of the county in which the action is brought."

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

CHAPTER 42

WATER TREATMENT PLANT OPERATORS

Part 1 — General

Section

37-42-101. Purpose.
37-42-102. Definitions.
37-42-103. Exemption.
37-42-104. Classification of treatment plants and distribution systems.

Part 2 — Water and Wastewater Operators' Advisory Council

37-42-201. Meetings — compensation of members — expenses.
37-42-202. Rulemaking power — examinations — continuing education requirements.
37-42-203. Duty to advise and assist department.

Part 3 — Licensing

37-42-301. Department to certify operators.
37-42-302. Unlawful to operate plant or system without certified operator — department to issue temporary certificates.
37-42-303. Operator of treatment plant or distribution system to be certified — exemption.
37-42-304. Application for operator's certificate — fee.
37-42-305. Certification without examination.
37-42-306. Issuance of operator certificate — display.
37-42-307. Retention of certificate by operators who terminate employment — notification to department.
37-42-308. Annual renewal — fees — revocation for failure to renew — reinstatement — notice of suspension.
37-42-309. Deposit of fees.
37-42-310 through 37-42-320 reserved.
37-42-321. Revocation of operator's certificate — disciplinary action by department.
37-42-322. Violation.

Chapter Cross-References

Metropolitan sanitary and/or storm sewer districts, Title 7, ch. 13, part 1.

Municipal sewage and/or water systems, Title 7, ch. 13, part 43.

Water quality, Title 75, ch. 5.

Public water supplies, distribution, and treatment, Title 75, ch. 6.

Aquatic ecosystem protections, Title 75, ch. 7.

Sanitation in subdivisions, Title 76, ch. 4, part 1.

Part 1

General

37-42-101. Purpose. It is hereby found and declared that the health and welfare of Montana citizens are jeopardized by persons not properly qualified to operate the water supply systems and that Montana's waters are endangered by persons not properly qualified to operate the wastewater treatment plants. It is declared the public policy of this state to control by certifying those persons working in these occupations in order to protect the public health and safety.

History: En. Sec. 1, Ch. 239, L. 1967; R.C.M. 1947, 69-5901.

37-42-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Certificate" means a certificate of competency issued by the department, stating that the operator holding the certificate has met the requirements for the specified operator classification of the certification program.

(2) "Council" means the water and wastewater operators' advisory council provided for in 2-15-2105.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) "Montana's waters" means all streams and lakes (including all rivers and lakes bordering on the state), wells, springs, irrigation systems, marshes, watercourses, waterways, drainage systems, and other bodies of water, surface and underground, natural or artificial, publicly or privately owned.

(5) "Operator" means the person in direct responsible charge of the operation of a water treatment plant, water distribution system, or wastewater treatment plant.

(6) "Wastewater treatment plant" means a facility designed to remove solids, bacteria, or other harmful constituents of sewage, industrial wastes, or other wastes and which discharges an effluent directly into this state's waters and which serves 10 or more families or serves an industry employing 10 or more persons.

(7) "Water distribution system" means that portion of the water supply system in which water is conveyed from the water treatment plant or other supply source to the premises of the consumer and which serves 10 or more families or supplies an industry employing 10 or more persons.

(8) "Water supply system" means the system of pipes, structures, and facilities through which the water is obtained, treated, sold, distributed, or otherwise offered to the public for household use or use by humans and which serves 10 or more families or serves an industry employing 10 or more persons.

(9) "Water treatment plant" means that portion of the water supply system which alters either the physical, chemical, or bacteriological quality of the water rendering it safe and palatable for human use.

History: En. Sec. 2, Ch. 239, L. 1967; amd. Sec. 85, Ch. 349, L. 1974; R.C.M. 1947, 69-5902(part); amd. Sec. 4, Ch. 243, L. 1983.

Compiler's Comments

1983 Amendment: Substituted (2) for former (1), which read: ""Board" means the board of water and wastewater operators provided for in 2-15-2105."

37-42-103. Exemption. Operators of plants or systems serving less than 10 families are exempt from this chapter.

History: En. Sec. 2, Ch. 239, L. 1967; amd. Sec. 85, Ch. 349, L. 1974; R.C.M. 1947, 69-5902(part).

37-42-104. Classification of treatment plants and distribution systems. The department shall classify all water treatment plants, water distribution systems, and wastewater treatment plants with due regard to the size, type, physical conditions affecting such water treatment plants and distribution systems, character of wastewaters to be treated and other physical conditions affecting such waste treatment plants, and according to the skill, knowledge, and experience that the operator in responsible charge must have to successfully supervise the operation of such water treatment plants and water distribution systems and such wastewater treatment facilities so as to protect the public health and prevent unlawful pollution.

History: En. Sec. 4, Ch. 239, L. 1967; amd. Sec. 111, Ch. 349, L. 1974; R.C.M. 1947, 69-5904.

Part 2

Water and Wastewater Operators' Advisory Council

37-42-201. Meetings — compensation of members — expenses. (1) Annually, when new members are appointed to the council, a chairman shall be elected at the next council meeting.

(2) Meetings may be called by the chairman or on written request of four members of the council when necessary to carry out its function to advise the department under this chapter. Four members constitute a quorum.

(3) Members of the council are entitled to be reimbursed and compensated as are members of advisory councils in 2-15-122(5).

History: En. Sec. 3, Ch. 239, L. 1967; amd. Sec. 1, Ch. 306, L. 1971; amd. Sec. 86, Ch. 349, L. 1974; amd. Sec. 46, Ch. 439, L. 1975; R.C.M. 1947, 69-5903(2), (3); amd. Sec. 5, Ch. 243, L. 1983.

Compiler's Comments

1983 Amendment: Substituted "council" for "board" throughout section; deleted former (2), which read: "The board shall hold at least one examination each year for the purpose of examining candidates for certification, at a time and place designated by the board. Those applicants whose competency is acceptable to the board shall be recommended to the department for certification."; at beginning of (2), changed "Additional meetings" to "Meetings"; after "carry out" inserted "its function to advise the department under"; deleted former (4), which read: "The members of the board shall receive a fee of $20 per day while in session, plus travel expenses as provided for in 2-18-501 through 2-18-503, including travel while discharging their official duties."; and inserted (3).

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Disrupting meeting as disorderly conduct, 45-8-101.

37-42-202. Rulemaking power — examinations — continuing education requirements. (1) The department shall adopt rules necessary to carry out this chapter. The rules shall include but are not limited to provisions establishing the basis for classification of treatment plants under 37-42-104, provisions establishing qualifications of applicants, procedures for examination of candidates, and other provisions necessary for the administration of this chapter.

(2) The department shall hold at least one examination each year, at a time and place designated by the department, for the purpose of examining candidates for certification.

(3) The department may establish reasonable continuing education requirements for certified water and wastewater operators.

History: En. Sec. 10, Ch. 239, L. 1967; amd. Sec. 3, Ch. 306, L. 1971; amd. Sec. 91, Ch. 349, L. 1974; R.C.M. 1947, 69-5910; amd. Sec. 6, Ch. 243, L. 1983.

Compiler's Comments

1983 Amendment: Near beginning of (1), substituted "department" for "board"; deleted former second sentence of (1), which read: "Before the rules are effective, they shall be approved by the department."; and inserted (2) and (3).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-42-203. Duty to advise and assist department. The council shall advise and assist the department in the administration of the certification program. The council shall serve as an advisory board to the department in actions relating to the qualifications of water and wastewater treatment plant operators.

History: En. Sec. 3, Ch. 239, L. 1967; amd. Sec. 1, Ch. 306, L. 1971; amd. Sec. 86, Ch. 349, L. 1974; amd. Sec. 46, Ch. 439, L. 1975; R.C.M. 1947, 69-5903(1); amd. Sec. 7, Ch. 243, L. 1983.

Compiler's Comments

1983 Amendment: Substituted "council" for "board" twice.

Cross-References

Public water supplies — actions to enforce compliance, 75-6-111.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-42-301. Department to certify operators. (1) The department shall certify persons as to their qualifications to supervise successfully the operation of such water and wastewater treatment plants and water distribution systems.

(2) In granting the certificates, the department shall give due regard to the interest of this state in protecting the drinking water supplies and the quality of its water.

History: (1)En. Sec. 5, Ch. 239, L. 1967; amd. Sec. 111, Ch. 349, L. 1974; Sec. 69-5905, R.C.M. 1947; (2)En. Sec. 8, Ch. 239, L. 1967; amd. Sec. 2, Ch. 306, L. 1971; amd. Sec. 89, Ch. 349, L. 1974; Sec. 69-5908, R.C.M. 1947; R.C.M. 1947, 69-5905, 69-5908(part); amd. Sec. 8, Ch. 243, L. 1983.

Compiler's Comments

1983 Amendment: At end of (1), deleted "after considering the recommendations of the board".

37-42-302. Unlawful to operate plant or system without certified operator — department to issue temporary certificates. (1) It is unlawful for a person, firm, or corporation, both municipal and private, operating a wastewater treatment plant, water treatment plant, or water distribution system to operate it unless the competency of the operator is certified to by the department under this chapter.

(2) Furthermore, it is unlawful for a person to perform the duties of an operator without being certified under this chapter.

(3) For good cause shown, the department may issue temporary certificates that are valid for up to 1 year.

History: **En. Sec. 11, Ch. 239, L. 1967; amd. Sec. 92, Ch. 349, L. 1974; R.C.M. 1947, 69-5911; amd. Sec. 9, Ch. 243, L. 1983.**

Compiler's Comments

1983 Amendment: Inserted (3).

37-42-303. Operator of treatment plant or distribution system to be certified — exemption. (1) Water and wastewater treatment plants and water distribution systems, whether publicly or privately owned, must be under the supervision of an operator whose competency is certified to by the department in a grade corresponding to the classification of that portion of the water or wastewater supply system to be supervised.

(2) However, this chapter does not prevent a governmental agency, corporation, or individual from continuing to employ in this capacity a person in responsible charge of the operation of such works on July 1, 1967. Certificates of proper classification may be issued without examination to the person or persons certified by the governing board or owner to have been in responsible charge of the water and wastewater plants and water distribution systems on July 1, 1967. A certificate so issued will be valid only in that plant.

History: **En. Sec. 6, Ch. 239, L. 1967; amd. Sec. 87, Ch. 349, L. 1974; R.C.M. 1947, 69-5906(part).**

37-42-304. Application for operator's certificate — fee. A person desiring to engage in the operation of a water treatment plant, water distribution system, or wastewater treatment plant shall first file an application with the department for a proper certificate. The department shall charge a fee of the same amount as the license cost as established pursuant to 37-1-134 and shall not act on an application until the fee has been paid.

History: **En. Sec. 8, Ch. 239, L. 1967; amd. Sec. 2, Ch. 306, L. 1971; amd. Sec. 89, Ch. 349, L. 1974; R.C.M. 1947, 69-5908(part); amd. Sec. 10, Ch. 243, L. 1983.**

Compiler's Comments

1983 Amendment: Near end of section, substituted "as established pursuant to 37-1-134" for "set forth in 37-42-308 for the filing of each application".

37-42-305. Certification without examination. The department may consider for certification the holder of a certificate issued by a governmental agency or equivalent certification board of another state on presentation to the department of satisfactory evidence that the applicant is in responsible charge of works located in this state requiring a certified operator and that he has successfully passed an examination at least equivalent to that required under 37-42-202(2) and 37-42-301.

History: **En. Sec. 6, Ch. 239, L. 1967; amd. Sec. 87, Ch. 349, L. 1974; R.C.M. 1947, 69-5906(part); amd. Sec. 11, Ch. 243, L. 1983.**

Compiler's Comments

1983 Amendment: Substituted "department" for "board" twice; near beginning of section, after "may consider" deleted "for recommendation"; near end of section, substituted "37-42-202(2)" for "37-42-201(2)".

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-42-306. Issuance of operator certificate — display. (1) The department shall issue certificates attesting to the competency of operators.

The certificates shall include the classification of the works which the operator is qualified to supervise.

(2) The certificate shall be prominently displayed in the office of the operator.

(3) Certificates continue in effect unless revoked by the department but remain the property of the department, and the certificate shall so state. A certificate shall be renewed annually by payment of the proper fee.

History: En. Sec. 7, Ch. 239, L. 1967; amd. Sec. 88, Ch. 349, L. 1974; R.C.M. 1947, 69-5907(part).

37-42-307. Retention of certificate by operators who terminate employment — notification to department. (1) Operators who terminate employment may retain their certificate for 2 years, provided that all other requirements are met. After 2 years, a certificate is automatically invalidated. Operators whose certificates are invalidated under this chapter may be issued new certificates of like classification, provided appropriate proof of competency is presented to the department. Successful completion of an examination may be required at the discretion of the department.

(2) Any person, firm, or corporation, both municipal and private, shall notify the department within 3 business days after termination if a certified water or wastewater operator terminates employment.

History: En. Sec. 7, Ch. 239, L. 1967; amd. Sec. 88, Ch. 349, L. 1974; R.C.M. 1947, 69-5907(3); amd. Sec. 12, Ch. 243, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted "department" for "board" twice; inserted (2).

37-42-308. Annual renewal — fees — revocation for failure to renew — reinstatement — notice of suspension. (1) Certificates issued under this chapter shall be renewed annually before July 1. A certificate issued after July 1 expires the following June 30. After the payment of the initial fee under 37-42-304, a certificate holder shall pay before July 1 of each certificate year a renewal fee according to the schedule adopted by the department pursuant to 37-1-134.

(2) If a certificate holder does not apply for a renewal of his certificate before July 1 and remit to the department the necessary renewal fee, he shall have his certificate suspended by the department. If the certificate remains suspended for a period of more than 30 days, it shall be revoked by the department. However, the department, before this revocation, shall notify the certificate holder by certified mail at the address on the issued certificate of its intention to revoke, at least 10 days before the time set for action to be taken by the department on the certificate.

(3) A certificate once revoked may not be reinstated unless it appears that an injustice has occurred through error or omission or other fact or circumstances indicating to the department that the certificate holder was not guilty of negligence or laches.

(4) Notice of suspension shall be given to the certificate holder when the suspension occurs and to the proper official or owner of the treatment works or distribution system.

(5) If a person whose certificate has been revoked through his own fault desires to continue as a water or wastewater plant operator, he must make

application to the department under 37-42-304. Successful completion of an examination may be required at the discretion of the department.

History: En. Sec. 9, Ch. 239, L. 1967; amd. Sec. 90, Ch. 349, L. 1974; R.C.M. 1947, 69-5909; amd. Sec. 13, Ch. 243, L. 1983.

Compiler's Comments

1983 Amendment: Near end of (1), before "schedule" deleted "following" and substituted "adopted by the department pursuant to 37-1-134" for former subsections (a) through (e), which read:

"(a) class I, $20;

(b) class II, $15;

(c) class III, $10;

(d) class IV, $5;

(e) class V, $3."; substituted "department" for "board" in four places in (2), once in (3), and at end of (5).

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

37-42-309. Deposit of fees. Filing and certification fees shall be deposited with the state treasurer in the department state special revenue fund and shall be used to pay the expenses of the council and department under this chapter. Moneys may be invested in accordance with procedures of investment of state moneys.

History: En. Sec. 8, Ch. 239, L. 1967; amd. Sec. 2, Ch. 306, L. 1971; amd. Sec. 89, Ch. 349, L. 1974; R.C.M. 1947, 69-5908(part); amd. Sec. 14, Ch. 243, L. 1983; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 243 deleted "the board of water and wastewater operators account in" in first sentence, after "state treasurer"; and near end of sentence, substituted "council" for "board".

Chapter 277 substituted reference to state special revenue fund for reference to earmarked revenue fund.

37-42-310 through 37-42-320 reserved.

37-42-321. Revocation of operator's certificate — disciplinary action by department. (1) The department may revoke the certificate of an operator, following a hearing by the department, when it is found that:

(a) the operator has practiced fraud or deception;

(b) reasonable care, judgment, or the application of his knowledge or ability was not used in the performance of his duties; or

(c) the operator is incompetent or unable to properly perform his duties.

(2) The department may take any disciplinary action pursuant to 37-1-136.

History: En. Sec. 7, Ch. 239, L. 1967; amd. Sec. 88, Ch. 349, L. 1974; R.C.M. 1947, 69-5907(2); amd. Sec. 15, Ch. 243, L. 1983.

Compiler's Comments

1983 Amendment: Substituted (2) for former (2), which read: "A person who has his certificate revoked by the department may appeal to the board for a rehearing within 10 days of notification by the department, after which time the revocation proceedings are no longer applicable and revocation of the certificate becomes final."

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Unfair trade practices and consumer protection, Title 30, ch. 14.

37-42-322. Violation. Any person, firm, or corporation, both municipal and private, violating any provisions of this chapter or the rules adopted hereunder is guilty of a misdemeanor. Each day of operation in violation of this chapter or any rules adopted hereunder shall constitute a separate offense.

History: En. Sec. 12, Ch. 239, L. 1967; R.C.M. 1947, 69-5912.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Penalty when none specified, 46-18-212.

CHAPTER 43

WATER WELL CONTRACTORS

Part 1 — General

Section

37-43-101. Purpose.
37-43-102. Definitions.
37-43-103. Repealed.

Part 2 — Board of Water Well Contractors

37-43-201. Seal — compensation of members.
37-43-202. Powers and duties.
37-43-203. Disciplinary authority — injunctions.

Part 3 — Licensing

37-43-301. Licensed contractor to supervise all construction.
37-43-302. License required.
37-43-303. Application — fee.
37-43-304. Temporary license pending examination.
37-43-305. Examination and qualifications.
37-43-306. Bond to be required.
37-43-307. Annual renewal — fee — revocation for nonrenewal.
37-43-308. Reciprocity.
37-43-309 and 37-43-310 reserved.
37-43-311. Suspension and revocation of license — grounds — procedure.
37-43-312. Penalty.

Part 4 — Miscellaneous Provisions

37-43-401. No action or counterclaim to be maintained except by licensee.
37-43-402. Completion of contracts by successor in interest of licensed contractor.

Part 1

General

37-43-101. Purpose. It is the purpose of this chapter to reduce and minimize the waste of groundwater resources within this state by reasonable regulation and licensing of drillers or makers of water wells in this state and to protect the health and general welfare by providing a means for the development of the natural resource of underground water in an orderly, sanitary, and reasonable manner. The reasonable regulation and licensing of drillers or makers of water wells is in the best interest of the public, and the waste of groundwater resources through inefficient or incompetent operations of drillers or makers of water wells is prohibited. For the protection of the public and for the conservation of underground water resources, it is necessary that standards be set and maintained to insure that competency in the drilling and making of water wells in this state is obtained.

History: En. Sec. 2, Ch. 176, L. 1961; amd. Sec. 2, Ch. 234, L. 1963; amd. Sec. 2, Ch. 232, L. 1974; amd. Sec. 250, Ch. 350, L. 1974; R.C.M. 1947, 66-2602.

37-43-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of water well contractors provided for in 2-15-3307.

(2) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(3) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of groundwater. The term does not include spring development or excavations, by backhoe or otherwise, for recovery and use of surface waters or for the purpose of stock watering or irrigation where the depth is 25 feet or less. The term does not include an excavation made for the purpose of obtaining or prospecting for oil, natural gas, minerals, or products of mining or quarrying or for inserting media to repressure oil- or natural-gas-bearing formations or for storing petroleum, natural gas, or other products.

(4) "Water well contractor" or "contractor" means a natural person who contracts on behalf of a firm, corporation, partnership, or other business entity to construct a water well on lands other than his own for compensation.

(5) "Water well driller" or "driller" means any person at a drilling site causing a water well to be drilled.

History: En. 66-2602.1 by Sec. 251, Ch. 350, L. 1974; amd. Sec. 2, Ch. 232, L. 1974; amd. Sec. 1, Ch. 268, L. 1975; R.C.M. 1947, 66-2602.1(part); amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 728, L. 1985.

Compiler's Comments

1985 Amendment: In (2) substituted "department of natural resources and conservation" for "department of commerce" and substituted "Title 2, chapter 15, part 33" for Title 2, chapter 15, part 18"; in (4) after "natural person" substituted "who contracts on behalf of a firm, corporation, partnership, or other business entity to construct" for "who constructs"; and inserted (5).

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

37-43-103. Repealed. Sec. 10, Ch. 728, L. 1985.

History: En. 66-2602.2 by Sec. 252, Ch. 350, L. 1974; amd. Sec. 2, Ch. 232, L. 1974; R.C.M. 1947, 66-2602.2.

Part 2

Board of Water Well Contractors

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-3307.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-43-201. Seal — compensation of members. (1) The board shall have a seal with the words engraved thereon, "Board of Water Well Contractors", and such seal shall be affixed to all writs, authentication of records, and other official proceedings of the board. The courts of this state shall take judicial notice of such seal.

(2) Each appointed member of the board who is not a government employee shall receive as compensation for his services the sum of $20 per day for each day actually engaged in the performance of the duties of his office, including time of travel between his home and the places at which he shall perform such duties, together with mileage and per diem expenses as provided for in 2-18-501 through 2-18-503. The state engineer, the director of environmental sanitation of the state board of health, and other employees of the state of Montana shall receive no extra compensation for their services as members of the board.

History: Ap. p. 82A-1602.26 by Sec. 3, Ch. 232, L. 1974; Sec. 361, Ch. 350, L. 1974; Sec. 82A-1602.26, R.C.M. 1947; Ap. p. Sec. 4, Ch. 176, L. 1961; amd. Sec. 152, Ch. 147, L. 1963; amd. Sec. 1, Ch. 278, L. 1969; amd. Sec. 25, Ch. 100, L. 1973; amd. Sec. 253, Ch. 350, L. 1974; amd. Sec. 41, Ch. 439, L. 1975; Sec. 66-2604, R.C.M. 1947; R.C.M. 1947, 66-2604, 82A-1602.26(4), (5); amd. Sec. 4, Ch. 83, L. 1981.

Compiler's Comments

1981 Amendment: Deleted former subsection (2) relating to board authority to hire staff.

Cross-References

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

37-43-202. Powers and duties. (1) The board may exercise the authority granted to it by this chapter.

(2) The board shall adopt rules and orders to effectuate this chapter.

(3) The board shall adopt rules to establish mandatory water well construction standards and enforcement procedures by January 1, 1987. The standards must address the protection of the drilling site; specifications for casing materials; materials and specifications for well screens; casing perforations; well development procedures; proper sealing and grouting; temporary capping; cleaning and disinfecting; bonds; guaranties; contractors' and drillers' qualifications; tests for yield and drawdown; reporting procedures and requirements for water quality, well logs, location of wells, and information relating to local conditions; well filters; access ports; gravel packing; sampling methods; plumbness and alignment of the hole and casing; well abandonment procedures; and other necessary and appropriate standards.

(4) The board may request the department to inspect water wells drilled or being drilled, and the department has access to these at reasonable times.

(5) The board may establish a program for training water well drillers or prospective water well drillers and apprentices to more effectively carry out this chapter.

(6) The board shall set and enforce standards and rules governing the licensing, registration, and conduct of water well drillers and water well contractors.

(7) The board shall set fees commensurate with costs. The board may establish fees, including but not limited to fees for application, examination, renewal, reciprocity, late renewal, and continuing education. Board costs not related to specific programs may be equitably distributed as determined by the board. The board shall maintain records sufficient to support the fees charged for each program area.

(8) The rules of the board shall be compiled in printed form for distribution to interested persons, for which the department may charge a fee. Sums

realized from these sales shall be deposited in the state special revenue fund for the use of the board.

(9) The board shall:

(a) authorize the department to issue licenses to qualified water well contractors and drillers in this state;

(b) cause examinations to be made of applicants for licenses;

(c) deny, revoke, or suspend licenses for good cause, after notice and opportunity to be heard;

(d) reinstate licenses previously revoked when justification is shown to the satisfaction of the board; and

(e) generally perform duties which will carry out this chapter.

(10) The board shall pay to the department its share of the assessed costs of the department in administering this chapter.

History: En. Sec. 5, Ch. 176, L. 1961; amd. Sec. 153, Ch. 147, L. 1963; amd. Sec. 3, Ch. 234, L. 1963; amd. Sec. 254, Ch. 350, L. 1974; R.C.M. 1947, 66-2605; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 728, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (3); in (5) after "The board may", deleted "subject to 37-1-101 and 37-1-121"; inserted (6) and (7); in (8) at end deleted "subject to 37-1-101(6)"; in (9)(a) after "contractors", inserted "and drillers"; in (9)(c) before "revoke", inserted "deny"; and inserted (10).

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Duties of boards, 37-1-131.

37-43-203. Disciplinary authority — injunctions. (1) The board may adopt rules specifying grounds for disciplinary action and rules providing for:

(a) revocation of a license;

(b) suspension of its judgment of revocation on terms and conditions determined by the board;

(c) suspension of the right to practice for a period not exceeding 1 year;

(d) placing a licensee on probation;

(e) reprimand or censure of a licensee; or

(f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by the board must be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(3) A board may maintain an action to enjoin a person from engaging in the drilling, making, or construction of water wells until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

History: En. Sec. 3, Ch. 728, L. 1985.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-43-301. Licensed contractor to supervise all construction. Any firm, corporation, or partnership may engage in the business of constructing water wells provided a licensed contractor is placed in charge of all water well construction.

History: En. 66-2602.1 by Sec. 251, Ch. 350, L. 1974; amd. Sec. 2, Ch. 232, L. 1974; amd. Sec. 1, Ch. 268, L. 1975; R.C.M. 1947, 66-2602.1(part).

37-43-302. License required. (1) The drilling, making, or construction of water wells into the groundwater resources of this state is declared to be a business and activity affecting the public interest, requiring reasonable standards of competence. Except as provided in subsection (2), it is unlawful for any contractor or driller, as defined in this chapter, to construct a water well without first having obtained a valid license therefor as provided for in this chapter.

(2) A license is not required for:

(a) a person who drills a water well on land that is owned or leased by him and is used by him for farming, ranching, or agricultural purposes or as his residence and who obtains a permit from the board; or

(b) a person who performs labor or services for a licensed water well contractor or driller in connection with the drilling of a water well at the direction and under the personal supervision of a licensed water well contractor or driller.

(3) (a) To obtain a permit under subsection (2)(a), a person shall file with the department an application containing the applicant's name, mailing address, the location of the proposed well, the nature of the applicant's ownership interest in the property on which the well is to be drilled, and the use for the proposed well.

(b) The board shall promptly issue a permit if it finds that the applicant intends to drill the well on land that he owns or leases and that he uses for farming, ranching, or agricultural purposes or as his residence.

History: En. Sec. 3, Ch. 176, L. 1961; R.C.M. 1947, 66-2603; amd. Sec. 19, Ch. 22, L. 1979; amd. Sec. 4, Ch. 728, L. 1985.

Compiler's Comments

1985 Amendment: In (1), at beginning of second sentence inserted exception clause and in second sentence, after "contractor", inserted "or driller"; and inserted (2) and (3).

37-43-303. Application — fee. (1) Except as provided in 37-43-302(2), a person desiring to engage in the drilling, making, or construction of one or more wells for underground water in this state shall first file an application with the department for a contractor's or driller's license, setting out his qualifications, the equipment proposed to be used in the contracting, and other matters required by the board on forms adopted by the board.

(2) The department shall charge a fee prescribed by the board for filing the application of a person. The application shall not be acted on until the fee has been paid. Fees collected under this section shall be deposited in the state special revenue fund for the use of the board.

(3) A license to construct water wells shall be issued to an applicant if, in the opinion of the board, the applicant is qualified to conduct water well construction operations. In the granting of licenses, the board shall have due

regard for the interest of this state in the protection of its underground waters.

History: En. Sec. 6, Ch. 176, L. 1961; amd. Sec. 154, Ch. 147, L. 1963; amd. Sec. 4, Ch. 234, L. 1963; amd. Sec. 255, Ch. 350, L. 1974; R.C.M. 1947, 66-2606(1); amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 642, L. 1983; amd. Sec. 5, Ch. 728, L. 1985.

Compiler's Comments

1985 Amendment: In (1), at beginning inserted exception clause and after "contractor's" inserted "or driller's"; in (2) at end deleted "subject to 37-1-101(6)".

1983 Amendments: Chapter 277 substituted reference to state special revenue fund for reference to earmarked revenue fund.

Chapter 642, near beginning of (2), after "fee", changed "of $100" to "prescribed by the board".

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

37-43-304. Temporary license pending examination. A temporary water well contractor's or driller's license may be issued to a person who, by evidence satisfactory to the board, is found to possess the qualifications numbered (a) through (f) in 37-43-305(1) and who has applied for a license under this chapter. The temporary license entitles the holder to engage in the business of drilling, making, or constructing water wells until the time of the next examination given under 37-43-305. On the applicant's successfully meeting the board's requirements on examination, the temporary license shall be returned to the department and a regular license issued. If the holder of a temporary license fails, after notice of the holding of an examination, to submit himself for examination or to meet the board's requirements, the temporary license expires and shall be returned to the department for cancellation.

History: En. Sec. 6, Ch. 176, L. 1961; amd. Sec. 154, Ch. 147, L. 1963; amd. Sec. 4, Ch. 234, L. 1963; amd. Sec. 255, Ch. 350, L. 1974; R.C.M. 1947, 66-2606(2); amd. Sec. 6, Ch. 728, L. 1985.

Compiler's Comments

1985 Amendment: Near beginning of first sentence, after "contractor's", inserted "or driller's".

37-43-305. Examination and qualifications. (1) Under rules pertaining to the business of drilling and contracting for drilling of water wells which the board adopts, the department shall inquire by examination or otherwise into the qualifications of applicants for licenses to drill or make wells for the production of underground waters in this state. Examinations may be oral, written, or both. The qualifications required by the board are:

(a) familiar knowledge of groundwater laws of this state and sanitary standards for water well drilling and construction of water wells;

(b) knowledge of types of water well construction;

(c) knowledge of types of drilling tools and their uses;

(d) knowledge of underground geology in its relation to well construction;

(e) possession of adequate equipment by the applicant to complete satisfactory water wells under the standards of the board;

(f) financial responsibility of the applicant;

(g) successful completion of an examination given by the department; and

(h) the applicant must have completed a minimum of 1 year apprenticeship under the direct supervision of a licensed water well contractor.

(2) The department shall give examinations at times and places the board determines. Failure of an applicant to successfully complete the examination

disqualifies him from making further application for a period of 3 months. The board shall act within a reasonable time on applications for licenses. An application shall be accompanied by the initial fee, and failure to successfully meet the requirements of the board does not entitle the applicant to a refund of the fee.

History: En. Sec. 8, Ch. 176, L. 1961; amd. Sec. 4, Ch. 232, L. 1974; amd. Sec. 257, Ch. 350, L. 1974; R.C.M. 1947, 66-2608; amd. Sec. 4, Ch. 642, L. 1983; amd. Sec. 7, Ch. 728, L. 1985.

Compiler's Comments

1985 Amendment: In (1) after "the department shall", deleted "subject to 37-1-101(4)".

1983 Amendment: In (2), reduced time for reapplication from 6 to 3 months.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-43-306. Bond to be required. The department, on issuance of a contractor's license under this chapter, shall require, before the person commences operations in this state, a good and sufficient surety bond or in lieu thereof its equivalent in a certificate of deposit, cashier's check, bank draft, or certified check, to be approved by the board, in the penal sum of $4,000, conditioned that the licensee will comply with the rules of the board.

History: En. Sec. 9, Ch. 176, L. 1961; amd. Sec. 5, Ch. 232, L. 1974; amd. Sec. 258, Ch. 350, L. 1974; amd. Sec. 2, Ch. 268, L. 1975; R.C.M. 1947, 66-2609; amd. Sec. 5, Ch. 642, L. 1983; amd. Sec. 8, Ch. 728, L. 1985.

Compiler's Comments

1985 Amendment: Near beginning before "license", inserted "contractor's", and at end deleted "and reasonable requirements made by the board in connection with the drilling of an individual well".

1983 Amendment: Increased bonding requirement from $1,000 to $4,000.

37-43-307. Annual renewal — fee — revocation for nonrenewal. (1) The term for licenses issued under this chapter is from July 1 of each year through the following June 30. After the payment of the initial fee under 37-43-303, a licensee shall pay, before the first day of each license year, a renewal fee as prescribed by the board.

(2) If a licensee does not apply for renewal of his license before the first day of a license year and remit to the department the renewal fee, he shall have his license suspended by the board. If the license remains suspended for a period of more than 30 days after the first day of a license year, it shall be revoked by the board. However, the department, prior to this revocation, shall notify the licensee of the board's intention to revoke at least 10 days prior to the time set for action to be taken by the board on the license, by mailing notice to the licensee at the address appearing for the licensee in the records and files of the department. A license once revoked may not be reinstated unless it appears that an injustice has occurred indicating to the board that the licensee was not guilty of negligence or laches. If a person whose license has been revoked through his own fault desires to engage in the business of water well drilling in this state or contracting therefor, he must apply under 37-43-303 and 37-43-304. Notice of suspension shall be given a licensee when the suspension occurs.

History: En. Sec. 7, Ch. 176, L. 1961; amd. Sec. 256, Ch. 350, L. 1974; R.C.M. 1947, 66-2607; amd. Sec. 6, Ch. 642, L. 1983.

Compiler's Comments

1983 Amendment: At end of (1) after "fee" changed "of $25" to "as prescribed by the board".

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-43-308. Reciprocity. If a person holding a license entitling him to drill water wells in another state applies for a Montana water well contractor's license, the board may waive the apprenticeship requirements and examination requirements if it finds that the standards and requirements of the state in which the applicant is licensed are equal to or exceed those of Montana. However, the board may require the applicant to successfully complete an examination based on Montana statutes and rules relating to the drilling of water wells in this state.

History: En. Sec. 8, Ch. 642, L. 1983.

37-43-309 and 37-43-310 reserved.

37-43-311. Suspension and revocation of license — grounds — procedure. (1) A license issued under this chapter may be suspended or revoked by the board in cases other than failure of a licensee to renew the license after notice and hearing:

(a) in the event the licensee has violated a condition of the bond maintained by him as a prerequisite to issuance of the license;

(b) for the practice of fraud or deceit in obtaining a license;

(c) for gross negligence;

(d) for incompetence;

(e) for conviction of a felony; or

(f) for violating the requirements of this chapter.

(2) Any person may make complaint against a licensee. Complaints shall be in writing, signed by the complainant, and must specify the charges against the licensee. The board on its own motion or on receipt of a complaint shall hold a hearing on charges.

(3) A person bringing the complaint has the burden of proof and may, at the discretion of the board, be required to appear in person. A unanimous vote of the board is required in order to revoke or suspend a license. If a suspension is directed by the board, it may not be for a period in excess of 1 year.

History: En. Sec. 10, Ch. 176, L. 1961; amd. Sec. 259, Ch. 350, L. 1974; R.C.M. 1947, 66-2610; amd. Sec. 7, Ch. 642, L. 1983.

Compiler's Comments

1983 Amendment: In (3) after "burden of proof and", substituted "may, at the discretion of the board, be required to appear" for "must appear".

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

37-43-312. Penalty. Any person who shall willfully violate any lawful rule or order of the board or who shall engage in the business of drilling or making water wells without first having obtained a license as in this chapter required or who shall violate any provision of this chapter shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than $500 or imprisonment in a county jail for a term not exceeding 6 onths, or both. Any violation of this chapter shall be prosecuted by the ounty attorney in the county in which the violation occurred or is occurring, nd the trial thereof shall be held in that county.

History: En. Sec. 13, Ch. 176, L. 1961; R.C.M. 1947, 66-2613.

ross-References

Prosecutorial duties of County Attorney, -4-2712.

Duties of County Attorney relating to state atters, 7-4-2716.

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Part 4

Miscellaneous Provisions

37-43-401. No action or counterclaim to be maintained except by icensee. No action or counterclaim shall be maintained by any contractor in ny court in this state with respect to any agreement, work, labor, or mateials for which a license is required by this chapter or to recover the agreed rice or any compensation under any such agreement or for any such work, abor, or materials for which a license is required by this chapter without lleging and proving that such contractor had a valid license at the time of aking such agreement and of supplying such labor, work, or materials.

History: En. Sec. 12, Ch. 176, L. 1961; R.C.M. 1947, 66-2612.

ross-References

Counterclaim and cross-claim, Rule 13, .R.Civ.P. (see Title 25, ch. 20).

37-43-402. Completion of contracts by successor in interest of icensed contractor. Upon the transfer by operation of law to the successor interest of a licensed water well contractor's rights under a contract or greement for the drilling or making of a water well or wells, the successor interest to such rights shall be permitted to engage in the business of drillg, making, or construction of water wells to the extent necessary to perform he obligations of said licensed water well contractor under such contract or greement, provided that such engagement in business shall be under the upervision of a licensed water well contractor.

History: En. Sec. 1, Ch. 234, L. 1963; R.C.M. 1947, 66-2615.

CHAPTERS 44 THROUGH 49

RESERVED

CHAPTER 50

PUBLIC ACCOUNTANTS

Part 1 — General

ection
7-50-101. Definitions.
7-50-102. Exemptions.

Part 2 — Board of Public Accountants

37-50-201. Organization — general rulemaking power — quorum — seal — records.
37-50-202. Compensation of members — expenses.
37-50-203. Rules of the board.
37-50-204. Rulemaking powers relating to reexaminations.
37-50-205. Duties of the department.

Part 3 — Licensing

37-50-301. Illegal use of title.
37-50-302. Certified public accountants — certification — qualifications and requirements.
37-50-303. Public accountants — licensure — qualifications and requirements.
37-50-304. Public accountants — licensure without examination of former military personnel – examination otherwise required.
37-50-305. Education requirements.
37-50-306. Repealed.
37-50-307. Repealed.
37-50-308. Examination.
37-50-309. Credit for examinations taken in other states.
37-50-310. Existing certificates sufficient.
37-50-311. Certified public accountants — waiver of examination for holders of foreign or out of-state licenses, certificates, permits, or degrees.
37-50-312. Public accountants — waiver of examination for holders of out-of-state license.
37-50-313. Registration of foreign accountants — restriction on title used.
37-50-314. Annual permit required — display.
37-50-315. Deposit of moneys collected.
37-50-316. Other license fees prohibited.
37-50-317. Certificate, license, and permit expiration — renewal fees.
37-50-318 through 37-50-320 reserved.
37-50-321. Revocation and suspension of certificate, license, or permit or refusal to renew permit — recovery of costs.
37-50-322. Reinstatement of certificate, license, or permit to practice.
37-50-323 through 37-50-330 reserved.
37-50-331. Partnership composed of certified public accountants — registration.
37-50-332. Corporation composed of certified public accountants — registration.
37-50-333. Partnership composed of public accountants — registration.
37-50-334. Corporation composed of public accountants — registration.
37-50-335. Registration of offices.
37-50-336. Revocation or suspension of partnership or corporation registration.
37-50-337 through 37-50-340 reserved.
37-50-341. Initiation of proceedings — hearings and rulemaking.
37-50-342. Violation.

Part 4 — Miscellaneous Provisions

37-50-401. False statements by accountants — misdemeanor — penalty.
37-50-402. Privileged communications.

Chapter Cross-References

Professional service corporations, Title 35, ch. 4.

Part 1

General

37-50-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of public accountants provided for in 2-15-1866.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

History: En. 66-1807.1 by Sec. 160, Ch. 350, L. 1974; R.C.M. 1947, 66-1807.1; amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

37-50-102. Exemptions. Nothing contained in this chapter shall prohibit any person not a certified public accountant or licensed public accountant from serving as an employee of or an assistant to a certified public accountant or a licensed public accountant holding a permit to practice under 37-50-314 or a partnership or corporation composed of certified public accountants or licensed public accountants registered under this chapter or a foreign accountant registered under 37-50-313, provided that such employee or assistant shall not issue any accounting or financial statement over his name.

History: En. Sec. 27, Ch. 118, L. 1969; R.C.M. 1947, 66-1839; amd. Sec. 4, Ch. 684, L. 1979; amd. Sec. 1, Ch. 335, L. 1983.

Compiler's Comments

1983 Amendment: Substituted "permit" for "license" before "to practice under 37-50-314".

Part 2

Board of Public Accountants

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1865.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-50-201. Organization — general rulemaking power — quorum — seal — records. (1) The board shall elect annually a chairman and a ecretary from its members.

(2) The board may adopt rules for the conduct of its affairs and the dministration of this chapter.

(3) A quorum for the transaction of business consists of three members of he board.

(4) The board shall have a seal which shall be judicially noticed.

(5) The department shall keep records of the board's proceedings. In a proceeding in court, civil or criminal, arising out of or founded on this chaper, copies of these records certified as correct under the seal of the board are dmissible in evidence as tending to prove the content of these records.

History: En. Sec. 3, Ch. 118, L. 1969; amd. Sec. 162, Ch. 350, L. 1974; amd. Sec. 35, Ch. 39, L. 1975; R.C.M. 1947, 66-1815(1) thru (5); amd. Sec. 5, Ch. 684, L. 1979; amd. Sec. 2, Ch. 35, L. 1983.

ompiler's Comments

1983 Amendment: In (1) deleted reference to treasurer.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Public records, Title 2, ch. 6.

Entries in official books and records prima facie evidence, 26-1-605.

Entry made by officer or Board prima facie evidence, 26-1-606.

Requirement of authentication or identification, Rule 901, Montana Rules of Evidence (see Title 26, ch. 10).

Self-authentication, Rule 902, Montana Rules of Evidence (see Title 26, ch. 10).

Public records, Rule 1005, Montana Rules of Evidence (see Title 26, ch. 10).

Duties of Department, 37-1-101.

37-50-202. Compensation of members — expenses. Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 3, Ch. 118, L. 1969; amd. Sec. 162, Ch. 350, L. 1974; amd. Sec. 35, Ch. 439, L. 1975; R.C.M. 1947, 66-1815(6); amd. Sec. 6, Ch. 684, L. 1979; amd. Sec. 28, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Substituted section for "Each member of the board while actually engaged in the duties of his office is entitled to:

(1) a mileage allowance as provided in 2-18-503;

(2) expenses as provided in 2-18-501 and 2-18-502; and

(3) a salary equal to one-fourth the daily rate of a grade 8, step 1, classified state employee, for every 6 hours or fraction thereof spent away from home on board business".

37-50-203. Rules of the board. (1) The board may adopt such rules, consistent with the purposes of this chapter, as it considers necessary.

(2) The board shall adopt:

(a) rules of professional conduct appropriate to establish and maintain a high standard of integrity, dignity, and competency in the profession of public accounting, including competency in specific fields of public accounting;

(b) rules of procedure governing the conduct of matters before the board;

(c) rules governing education requirements, as provided in 37-50-305, for issuance of the certificate of a certified public accountant and the license for licensed public accountant;

(d) rules prescribing requirements for continuing education to be met by certified public accountants and licensed public accountants, in order to maintain their professional knowledge and competence, as a condition to continuing in the practice of public accounting. In issuing rules and individual orders regarding continuing education, the board in its discretion:

(i) may, among other things, use or rely upon guidelines and pronouncements of recognized educational and professional associations;

(ii) may prescribe the content, duration, and organization of courses; and

(iii) shall take into account the accessibility to applicants of such continuing education as it may require and any impediments to interstate practice of public accounting that may result from differences in such requirements in other states;

(e) rules governing partnerships and corporations practicing public accounting, including but not limited to rules concerning their style, name, title, and affiliation with any other organization and establishing reasonable standards with respect to professional liability insurance and unimpaired capital and prescribing joint and several liability for torts relating to professional services for shareholders of any such corporation failing to comply with such standards;

(f) internal rules considered necessary to initiate and conduct investigations and protect the confidences of the client of any certified public accountant or licensed public accountant subjected to board disciplinary proceedings;

(g) rules defining requirements for accounting experience, not exceeding 2 years, for issuance of the initial annual permit; and

(h) rules to enforce the provisions of this chapter, the purpose of which rules shall be to provide for the monitoring of the profession of public accounting and to maintain the quality of the accounting profession.

History: En. Sec. 5, Ch. 118, L. 1969; amd. Sec. 164, Ch. 350, L. 1974; R.C.M. 1947, 66-1817; amd. Sec. 7, Ch. 684, L. 1979; amd. Sec. 3, Ch. 335, L. 1983.

Compiler's Comments

1983 Amendment: In (2)(c) inserted "as provided in 37-50-305"; deleted former (2)(f) that ead "rules setting forth the terms, not exceedng 2 years, and areas of experience required for ertification as a certified public accountant and icensing as a licensed public accountant"; nserted (2)(f) through (2)(h); deleted (3), which ead: "At least 60 days prior to the adoption of rule or amendment, the department shall mail opies of the proposed rule or amendment to ach holder of a certificate or license issued under 37-50-314, with a notice advising him of the proposed effective date of the rule or amendment and requesting that he submit his comments on it at least 15 days prior to the effective date. These comments are advisory only. The department's certificate of mailing to licensed accountants is conclusive proof thereof."

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Duty of Board to adopt rules on conduct, 37-1-131.

37-50-204. Rulemaking powers relating to reexaminations. The board shall have power to prescribe by uniform rule for the following:

(1) the terms and conditions under which a candidate who passes one or more subjects of examination may be reexamined in only the remaining subects, with credit for the subjects previously passed;

(2) a reasonable waiting period for a candidate's reexamination in a subect he has failed;

(3) the maximum number of reexaminations for which a candidate may pply;

(4) the fees to be charged each candidate for initial examinations and speial examinations, which shall be commensurate with costs. With respect to eexaminations, a fee commensurate with costs may be charged for each subect in which the candidate is reexamined.

History: En. Sec. 14, Ch. 118, L. 1969; amd. Sec. 9, Ch. 533, L. 1977; R.C.M. 1947, 66-1826.

ross-References

Adoption and publication of rules, Title 2, ch. part 3.

37-50-205. Duties of the department. The department shall:

(1) assist the board in transactions of its business and keep a record of he board's official action; and

(2) assess to the board the reasonable costs of the department incurred in ssisting the board.

History: En. Sec. 21, Ch. 684, L. 1979.

ross-References

Duties of the Department, 37-1-101.

Part 3

Licensing

art Cross-References

Licensing to follow contested case procedure, 4-631.

Duty of Board to adopt and enforce licensing d certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-50-301. Illegal use of title. (1) No person may assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant unless such person holds a current certificate as a certified public accountant under this chapter. However, a foreign accountant who has registered under the provisions of 37-50-313 may use the title under which he is generally known in his country, followed by the name of the country from which he received his certificate, license, or degree.

(2) No partnership or corporation shall assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or corporation is composed of certified public accountants unless it is registered under 37-50-331 or 37-50-332, whichever is applicable, and all of its offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335.

(3) No person may assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a public accountant unless such person holds a current license as a licensed public accountant under this chapter.

(4) No partnership or corporation may assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or corporation is composed of public accountants unless it is registered under 37-50-331, 37-50-332, 37-50-333, or 37-50-334, whichever is applicable, and all of its offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335.

(5) No person, corporation, or partnership may assume or use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered accountant", or any other title or designation likely to be confused with "certified public accountant", "licensed public accountant", "public accountant" or any of the abbreviations "CA", "EA", "LA", or "RA" or similar abbreviations likely to be confused with "CPA". However, a foreign accountant who has registered under 37-50-313 may use the title under which he is generally known in his country, followed by the name of the country from which he received his certificate, license, or degree.

(6) No person may sign or affix his name or any trade or assumed name used by him in his profession or business with any wording indicating that he has expert knowledge in accounting or auditing to any accounting or financial statement or to any opinion on, report on, or certificate to any accounting or financial statement unless he holds a current permit issued under 37-50-314 and all of his offices in this state for the practice of public accounting are maintained and registered under 37-50-335. However, the provisions of this subsection do not prohibit any officer, employee, partner, or principal of any organization from affixing his signature to any statement or report in reference to the financial affairs of that organization with any wording designating the position, title, or office which he holds in that organization, nor

do the provisions of this subsection prohibit any act of a public official or public employee in the performance of his duties as such.

(7) No person may sign or affix a partnership or corporation name with any wording indicating that it is a partnership or corporation composed of persons having expert knowledge in accounting or auditing to any accounting or financial statement or to any report on or certificate to any accounting or financial statement unless the partnership or corporation is registered under 37-50-331, 37-50-332, 37-50-333, or 37-50-334 and all of its offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335.

(8) No person may assume or use the title or designation "certified public accountant" or "public accountant" in conjunction with names indicating or implying that there is a partnership or corporation or in conjunction with the designation "and company" or "and co." or a similar designation if, in any such case, there is in fact no bona fide partnership or corporation registered under 37-50-331, 37-50-332, 37-50-333, or 37-50-334. However, it is lawful for a sole proprietor to continue the use of the deceased's name in connection with his business for a reasonable period of time after the death of a former partner.

History: En. Sec. 26, Ch. 118, L. 1969; amd. Sec. 5, Ch. 207, L. 1974; amd. Sec. 14, Ch. 101, L. 1977; R.C.M. 1947, 66-1838; amd. Sec. 8, Ch. 684, L. 1979; amd. Sec. 162, Ch. 575, L. 1981; amd. Sec. 4, Ch. 335, L. 1983.

Compiler's Comments

1983 Amendment: At end of first sentence of (1), substituted "unless such person holds a current certificate as a public accountant under this chapter." for "unless such person has received a certificate as a certified public accountant in some state and is certified under 37-50-302, 37-50-310, or 37-50-311 and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335."; at end of (3) substituted "unless such person holds a current license as a licensed public accountant under this chapter." for "unless such person is licensed as a public accountant under this chapter, holds a current license issued under 37-50-314, and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335 or unless such person has received a certificate as a certified public accountant in some state, holds a current license issued under 37-50-314, and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335."; in (5) inserted "who has registered under 37-50-313" after "However, a foreign accountant"; in (6) substituted "permit" for "license" before "issued under 37-50-314".

1981 Amendment: Substituted "his country" for "this country" in (5).

37-50-302. Certified public accountants — certification — qualifications and requirements. The board shall grant an initial certificate as a certified public accountant to any person who:

(1) is of good moral character;

(2) has successfully passed the certified public accountants' examination; and

(3) meets the requirements of education set forth in this chapter and in board rules.

History: En. Sec. 7, Ch. 118, L. 1969; amd. Sec. 5, Ch. 168, L. 1971; amd. Sec. 166, Ch. 350, L. 1974; R.C.M. 1947, 66-1819; amd. Sec. 9, Ch. 684, L. 1979; amd. Sec. 5, Ch. 335, L. 1983.

Compiler's Comments

1983 Amendment: Rewrote introductory lause from "Certification as a certified public ccountant is available to any person who:".

37-50-303. Public accountants — licensure — qualifications and requirements. The board shall grant an initial license as a licensed public accountant to any person who:

(1) is of good moral character;

(2) meets the requirements of education set forth in this chapter and board rules; and

(3) complies with the qualifications and requirements in any one of the subsections of 37-50-304.

History: En. Sec. 8, Ch. 118, L. 1969; amd. Sec. 6, Ch. 168, L. 1971; amd. Sec. 167, Ch. 350, L. 1974; R.C.M. 1947, 66-1820; amd. Sec. 6, Ch. 341, L. 1981; amd. Sec. 163, Ch. 575, L. 1981; amd. Sec. 6, Ch. 335, L. 1983.

Compiler's Comments

1983 Amendment: Rewrote introductory clause from "Licensure as a public accountant is available to any person who:"; deleted former (1), which read: "is a resident of this state or has a place of business in this state or, as an employee, is regularly employed in this state"; in (2) inserted "and board rules".

1981 Amendments: Chapter 341 deleted former subsection (1) relating to a citizenship requirement.

Chapter 575 substituted "set forth in this chapter" for "[and experience] set forth in 37-50-305 [and 37-50-306]" in (3) (now (2)).

Cross-References

Rules for determining residency, 1-1-215.

Licensing investigation and review — record access, 37-1-135.

37-50-304. Public accountants — licensure without examination of former military personnel — examination otherwise required. (1) Persons serving in the armed forces of the United States on July 1, 1969, who immediately prior to entering this service held themselves out to the public as public accountants and who were engaged as principals in this state in the practice of public accounting as their principal occupation prior to service in the armed forces may register with the department within 6 months after the date of their separation from active service and, on registration and payment of the license fee, be issued a license by the department as a licensed public accountant. A principal is either the owner of or a partner in an existing accounting practice on July 1, 1969.

(2) A person who does not qualify under subsection (1) must fulfill the following additional requirements as a prerequisite to the issuance of a license as a licensed public accountant:

(a) He must pass the written examination in accounting practice.

(b) He must also pass the written examination in either accounting theory or auditing or, instead of the examination in auditing or theory, he must be the holder of a United States treasury card which is in good standing at the time of his sitting for the examination in accounting practice.

(3) The examinations referred to in subsection (2) shall be those prescribed for subjects under 37-50-308 and shall be conducted and graded by the same standards as those given to candidates for certified public accountant.

History: En. Sec. 9, Ch. 118, L. 1969; amd. Sec. 168, Ch. 350, L. 1974; R.C.M. 1947, 66-1821.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Duty of Department to administer and grade examinations, 37-1-101.

Licensing investigation and review — record access, 37-1-135.

37-50-305. Education requirements. A candidate for certification as a certified public accountant or licensing as a licensed public accountant must have graduated from a college or university accredited to offer a baccalaureate degree:

(1) with a concentration in accounting; or

(2) with a concentration other than accounting if supplemented by experience or by related courses in other areas of business administration and the board determines that an equivalent education has been achieved.

History: En. Sec. 12, Ch. 118, L. 1969; R.C.M. 1947, 66-1824; amd. Sec. 10, Ch. 684, L. 1979; amd. Sec. 7, Ch. 335, L. 1983.

Compiler's Comments

1983 Amendment: In (2), inserted "experience or by" before "related courses".

Cross-References

Licensing investigation and review — record access, 37-1-135.

37-50-306. Repealed. Sec. 26, Ch. 684, L. 1979.

History: En. Sec. 13, Ch. 118, L. 1969; amd. Sec. 169, Ch. 350, L. 1974; R.C.M. 1947, 66-1825(1), (2), (4), (5).

37-50-307. Repealed. Sec. 26, Ch. 684, L. 1979.

History: En. Sec. 18, Ch. 118, L. 1969; amd. Sec. 171, Ch. 350, L. 1974; R.C.M. 1947, 66-1830.

37-50-308. Examination. Except as provided in 37-1-101(4), the department shall administer a written examination in accounting, auditing, and related subjects as the board determines appropriate. The grade determination of the board is final in each case. The board may use the examination and grading services of the American institute of certified public accountants. The examination must be held at least annually and at such other times as applications warrant. The board may determine the time and place of examination and may adopt rules necessary for the orderly conduct of the examination.

History: En. Sec. 6, Ch. 118, L. 1969; amd. Sec. 165, Ch. 350, L. 1974; R.C.M. 1947, 66-1818; amd. Sec. 20, Ch. 22, L. 1979; amd. Sec. 11, Ch. 684, L. 1979; amd. Sec. 8, Ch. 335, L. 1983.

Compiler's Comments

1983 Amendment: Substituted "administer" for "hold and grade" before "a written examination"; substituted "board" for "department" two mes.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-50-309. Credit for examinations taken in other states. The board may by rule provide for granting credit to a candidate for his satisfacory completion of a written examination in any one or more of the subjects f examination given by the licensing authority in another state. These rules hall include requirements the board determines appropriate in order that an xamination approved as a basis for credit is, in the judgment of the board, t least as thorough as that included in the examination given in this state t the time the credit originally was granted by the other state for passing he examination.

History: En. Sec. 13, Ch. 118, L. 1969; amd. Sec. 169, Ch. 350, L. 1974; R.C.M. 1947, 6-1825(3); amd. Sec. 12, Ch. 684, L. 1979.

37-50-310. Existing certificates sufficient. Persons who, on July 1, 969, held certified public accountant certificates heretofore issued under the ws of this state shall not be required to obtain additional certificates under his chapter but shall otherwise be subject to all provisions of this chapter.

Such certificates heretofore issued shall, for all purposes, be considered certificates issued under this chapter and subject to the provisions hereof.

History: **En. Sec. 15, Ch. 118, L. 1969; R.C.M. 1947, 66-1827(part).**

37-50-311. Certified public accountants — waiver of examination for holders of foreign or out-of-state licenses, certificates, permits, or degrees. The board in its discretion may waive the examination and issue a certificate as a certified public accountant to any person otherwise eligible therefor who is the holder of a certificate, license, or permit as a certified public accountant, then in full force and effect, issued under the laws of any state or is the holder of a certificate, license, or degree in a foreign country constituting a recognized qualification for the practice of public accounting in such country, comparable to that of a certified public accountant in this state, which is then in full force and effect, where the requirements entitling him to practice as such certified public accountant were substantially equivalent to those in force in the state of Montana at the time the certificate was originally issued.

History: **En. Sec. 15, Ch. 118, L. 1969; R.C.M. 1947, 66-1827(part); amd. Sec. 9, Ch. 335, L. 1983.**

Compiler's Comments

1983 Amendment: Near beginning of section inserted "license, or permit" after "who is the holder of a certificate".

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-50-312. Public accountants — waiver of examination for holders of out-of-state license. The board in its discretion may waive the examination and register as a licensed public accountant any person otherwise eligible therefor who is the holder of a license as a licensed public accountant, then in full force and effect, issued under the laws of any state or is the holder of a license or degree in a foreign country constituting a recognized qualification for the practice of public accounting in such country, comparable to that of a licensed public accountant in this state, which is then in full force and effect, where the requirements entitling him to practice as such licensed public accountant were substantially equivalent to those in force in the state of Montana at the time the license was originally issued.

History: **En. Sec. 15, Ch. 118, L. 1969; R.C.M. 1947, 66-1827(part); amd. Sec. 10, Ch. 335, L. 1983.**

Compiler's Comments

1983 Amendment: Near beginning of section inserted "licensed" before "public accountant" twice.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-50-313. Registration of foreign accountants — restriction on title used. The board may in its discretion permit the registration of any person of good moral character who is the holder of a certificate, license, or degree in a foreign country constituting a recognized qualification for the practice of public accounting in such country. A person so registered shall use only the title under which he is generally known in his country, followed by the name of the country from which he received his certificate, license, or degree.

History: **En. Sec. 16, Ch. 118, L. 1969; R.C.M. 1947, 66-1828.**

37-50-314. Annual permit required — display. (1) No person may engage in the practice of public accounting in this state unless he holds a current annual permit issued by the department. An annual permit to engage in the practice of public accounting in this state shall be issued by the department to a person who holds a current certificate as a certified public accountant or license as a licensed public accountant and complies with the requirements of this chapter.

(2) After the expiration of the 3-year period immediately following the effective date of a board rule establishing continuing education requirements, each application for renewal of a permit by a person who has held his certificate or license for 3 years or more must be accompanied or supported by evidence satisfactory to the board of fulfillment of such requirements during the 3-year period immediately preceding the application.

(3) The board may in its discretion waive the requirement stated in subsection (2) if the applicant agrees to follow a particular program or schedule of continuing education agreeable to the board.

(4) The board may relax or suspend continuing education requirements for an applicant who certifies that he does not intend to engage in the practice of public accounting and for an applicant who cannot fulfill the requirement due to individual hardship.

(5) Subject to subsections (3) and (4), the board may revoke, suspend, or refuse to renew the permit of an applicant who fails to furnish evidence of having met the continuing education requirements established by the board.

(6) The current annual permit to engage in the practice of public accounting must be prominently displayed for public inspection.

History: En. Sec. 21, Ch. 118, L. 1969; amd. Sec. 174, Ch. 350, L. 1974; R.C.M. 1947, 66-1833; amd. Sec. 13, Ch. 684, L. 1979; amd. Sec. 11, Ch. 335, L. 1983.

Compiler's Comments

1983 Amendment: In (1) rewrote from: "Annual certificates and licenses to engage in the practice of public accounting in this state shall be issued by the department to certified public accountants and to licensed public accountants. There is an annual certificate or license renewal fee in an amount to be determined by the board. Annual certificates and licenses expire on December 31 of each year and may be renewed for a period of 1 year by certified public accountants and licensed public accountants in good standing on payment of the annual renewal fee."; deleted former (2), which read: "A person who fails to renew his license or certificate shall promptly surrender it to the board upon request."; in (2) inserted "of a permit" after "renewal"; in (5) substituted "permit" for "certificate or license"; inserted (6).

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-50-315. Deposit of moneys collected. Fees and other moneys collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board.

History: En. Sec. 4, Ch. 118, L. 1969; amd. Sec. 163, Ch. 350, L. 1974; R.C.M. 1947, 66-1816; amd. Sec. 14, Ch. 684, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

37-50-316. Other license fees prohibited. No certificate, permit, or icense fees shall be imposed as a condition upon the practice of public accountancy other than those provided for in this chapter.

History: En. Sec. 30, Ch. 118, L. 1969; R.C.M. 1947, 66-1842; amd. Sec. 12, Ch. 335, L. 1983.

Compiler's Comments

1983 Amendment: Inserted "certificate, permit, or" before "license fees".

37-50-317. Certificate, license, and permit expiration — renewal fees. (1) Certificates, licenses, and permits issued by the board expire on December 31 of each year.

(2) Certificates and licenses must be renewed by the department upon payment of the annual renewal fee prescribed by the board.

(3) Permits must be renewed by the department upon payment of the annual renewal fee and upon compliance with the continuing education requirements prescribed by the board.

History: En. Sec. 13, Ch. 335, L. 1983.

37-50-318 through 37-50-320 reserved.

37-50-321. Revocation and suspension of certificate, license, or permit or refusal to renew permit — recovery of costs. (1) After notice and hearing as provided in 37-50-341, the board may revoke or may suspend any certificate issued under 37-50-302 or any license granted under 37-50-303 or may revoke, suspend, or refuse to renew any permit issued under 37-50-314 or may censure the holder of any such license for any one or any combination of the following causes:

(a) fraud or deceit in obtaining a certificate as certified public accountant or in obtaining a license to practice public accounting under this chapter;

(b) dishonesty, fraud, or gross negligence in the practice of public accounting;

(c) violation of any provisions of this chapter or rules of the board;

(d) conviction of a felony under the laws of any state or of the United States;

(e) conviction of any crime, an element of which is dishonesty or fraud, under the laws of any state or of the United States;

(f) cancellation, revocation, suspension, or refusal to renew authority to practice as a certified public accountant or a public accountant by any other state for any cause other than failure to pay an annual registration fee in such other state;

(g) suspension or revocation of the right to practice before any state or federal agency;

(h) failure to pay the renewal fees prescribed by the board.

(2) The board may, following a final determination resulting in any disciplinary action taken by the board under subsection (1), recover from the disciplined party all reasonable costs of any proceeding incurred for the purposes of that disciplinary action.

History: En. Sec. 22, Ch. 118, L. 1969; R.C.M. 1947, 66-1834; amd. Sec. 15, Ch. 684, L. 1979; amd. Sec. 14, Ch. 335, L. 1983.

Compiler's Comments

1983 Amendment: Redesignated subsections; in (1) substituted "permit" for "license" before "issued under 37-50-314"; rewrote (1)(c) from "violation of any of the provisions of 37-50-301"; deleted former (4) (that would have followed (1)(c) under redesignation), which read: "violation of a rule of professional conduct promulgated by the board under the authority granted by this chapter"; inserted (1)(h) and (2).

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

37-50-322. Reinstatement of certificate, license, or permit to practice. On application in writing and after hearing pursuant to notice, the board may authorize the department to:

(1) issue a new certificate, license, or permit;

(2) reinstate a suspended or revoked certificate, license, or permit; or

(3) modify the terms of suspension of a certificate, license, or permit.

History: En. Sec. 25, Ch. 118, L. 1969; amd. Sec. 176, Ch. 350, L. 1974; R.C.M. 1947, 66-1837; amd. Sec. 15, Ch. 335, L. 1983.

Compiler's Comments

1983 Amendment: Rewrote section that formerly read: "On application in writing and after hearing pursuant to notice, the board may authorize the department to issue a new certificate to a certified public accountant whose certificate has been revoked or may permit the relicensing of anyone whose license has been revoked or may reissue or modify the suspension of a license to practice public accounting which has been revoked or suspended."

37-50-323 through 37-50-330 reserved.

37-50-331. Partnership composed of certified public accountants — registration. (1) A partnership that is or plans to become engaged in this state in the practice of public accounting shall register with the department as a partnership of certified public accountants provided it meets the following requirements:

(a) Each partner or manager personally engaged in this state in the practice of public accounting must be a certified public accountant of some state in good standing and must be certified under this chapter.

(b) Each partner must be a certified public accountant of some state in good standing.

(2) Application for registration must be made on the affidavit of a general partner of the partnership who is a certified public accountant of this state in good standing. The board shall in each case determine whether the applicant is eligible for registration. A partnership which is registered may use the words "certified public accountants" or the abbreviation "CPAs" in connection with its partnership name. Notification shall be given the department within 1 month after the admission to or withdrawal of a partner from a partnership so registered.

History: En. Sec. 17, Ch. 118, L. 1969; amd. Sec. 170, Ch. 350, L. 1974; R.C.M. 1947, 66-1829; amd. Sec. 16, Ch. 684, L. 1979.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

37-50-332. Corporation composed of certified public accountants — registration. (1) A professional service corporation organized for the practice of public accounting must register with the board as a corporation of certified public accountants provided it meets the following requirements:

(a) The sole purpose and business of the corporation must be to furnish to the public services not inconsistent with this chapter or the rules of the board, but the corporation may invest its funds in a manner not incompatible with the practice of public accounting.

(b) Each shareholder of the corporation must be a certified public accountant of some state in good standing and must be principally employed by the corporation or actively engaged in its business. No other person may have any interest in the stock of the corporation. The principal of the corporation and any officer or director having authority over the practice of public accounting by the corporation must be certified public accountants of some state in good standing.

(c) Each shareholder, officer, or manager of the corporation personally engaged within this state in the practice of public accounting as a member thereof must be a certified public accountant of some state in good standing and must be certified under this chapter.

(2) Application for such registration must be made upon the affidavit of a shareholder who holds a permit to practice in this state as a certified public accountant. The board shall determine whether the applicant is eligible for registration. A corporation which is so registered may use the words "certified public accountant" or the abbreviation "CPA" in connection with its corporation name. Notification shall be given the board within 1 month after the admission or withdrawal of a shareholder of a corporation so registered.

History: En. 66-1829.1 by Sec. 1, Ch. 207, L. 1974; amd. Sec. 11, Ch. 101, L. 1977; R.C.M. 1947, 66-1829.1; amd. Sec. 17, Ch. 684, L. 1979.

Cross-References

Professional service corporations, Title 35, ch. 4.

37-50-333. Partnership composed of public accountants — registration. (1) A partnership engaged in this state in the practice of public accounting must register with the department as a partnership of licensed public accountants, provided it meets the following requirements:

(a) At least one general partner must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a permit issued under 37-50-314 which is in effect.

(b) Each partner personally engaged in this state in the practice of public accounting must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a permit issued under 37-50-314 which is in effect.

(c) Each local manager in charge of an office or a firm in this state must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a permit issued under 37-50-314 which is in effect.

(2) Application for registration must be made on the affidavit of a general partner of the partnership who holds a permit to practice in this state as a certified public accountant or as a licensed public accountant. The board shall in each case determine whether the applicant is eligible for registration. A partnership which is registered may use the words "public accountants" in

connection with its partnership name. Notification shall be given the department within 1 month after the admission to or withdrawal of a partner from a partnership so registered.

History: **En. Sec. 19, Ch. 118, L. 1969; amd. Sec. 172, Ch. 350, L. 1974; R.C.M. 1947, 66-1831; amd. Sec. 18, Ch. 684, L. 1979; amd. Sec. 16, Ch. 335, L. 1983.**

Compiler's Comments

1983 Amendment: In (1)(a) through (1)(c) substituted "permit" for "license" before "issued under 37-50-314"; in first sentence of (2) substituted "permit" for "license" before "to practice in this state".

Cross-References

Affidavits, Title 26, ch. 1, part 10.

Partnerships, Title 35, ch. 10.

37-50-334. Corporation composed of public accountants — registration. (1) A professional service corporation organized for the practice of public accounting must register with the board as a corporation of public accountants, provided it meets the following requirements:

(a) The sole purpose and business of the corporation must be to furnish to the public services not inconsistent with this chapter or the rules of the board, but the corporation may invest its funds in a manner not incompatible with the practice of public accounting.

(b) At least one shareholder thereof must be a certified public accountant or public accountant of this state in good standing and must hold a permit issued under 37-50-314 which is in effect.

(c) Each shareholder of the corporation must be a certified public accountant or a licensed public accountant of some state, in good standing, and must be principally employed by the corporation or actively engaged in its business. No other person may have any interest in the stock of the corporation. The principal of the corporation and any officer or director having authority over the practice of public accounting by the corporation must be certified public accountants or public accountants of some state in good standing.

(d) Each shareholder of the corporation personally engaged within this state in the practice of public accounting as a member thereof must be a certified public accountant or a licensed public accountant of this state in good standing and must hold a permit issued under 37-50-314 which is in effect.

(e) In order to facilitate compliance with the provisions of this section relating to the ownership of stock, there must be a written agreement binding the corporation or the qualified shareholders to purchase any shares offered for sale by or not under the ownership or effective control of a qualified shareholder and binding any shareholder not a qualified shareholder to sell such shares to the corporation or the qualified shareholders. The agreement must be noticed on each certificate of corporate stock.

(2) Application for such registration must be made upon the affidavit of a shareholder who holds a permit to practice in this state as a certified public accountant or licensed public accountant. The board shall determine whether he applicant is eligible for registration. A corporation which is so registered may use the words "public accountant" or the abbreviation "PA" in connecion with its corporation name. Notification shall be given the board within

1 month after the admission or withdrawal of a shareholder of a corporation so registered.

History: En. 66-1831.1 by Sec. 2, Ch. 207, L. 1974; amd. Sec. 12, Ch. 101, L. 1977; R.C.M. 1947, 66-1831.1; amd. Sec. 19, Ch. 684, L. 1979; amd. Sec. 17, Ch. 335, L. 1983.

Compiler's Comments

1983 Amendment: In (1)(b) and (1)(d) substituted "permit" for "license" before "issued under 37-50-314"; in first sentence of (2) substituted "permit" for "certificate or license" before "to practice in this state".

Cross-References

Affidavits, Title 26, ch. 1, part 10.

Professional service corporations, Title 35, ch. 4.

37-50-335. Registration of offices. Each office established or maintained in this state for the practice of public accounting in this state by a certified public accountant or a partnership or corporation of certified public accountants or by a licensed public accountant or a partnership or corporation of licensed public accountants or by one registered under 37-50-313 shall be registered annually with the department. A fee may not be charged for this registration. In addition, each individual engaged in this state in the practice of public accounting must have annually received a permit under 37-50-314.

History: En. Sec. 20, Ch. 118, L. 1969; amd. Sec. 3, Ch. 207, L. 1974; amd. Sec. 173, Ch. 350, L. 1974; amd. Sec. 13, Ch. 101, L. 1977; R.C.M. 1947, 66-1832; amd. Sec. 20, Ch. 684, L. 1979; amd. Sec. 18, Ch. 335, L. 1983.

Compiler's Comments

1983 Amendment: At end substituted present language for "accounting must be certified or licensed annually under 37-50-314".

37-50-336. Revocation or suspension of partnership or corporation registration. After notice and hearing as provided in 37-50-341, the board shall revoke the registration of a partnership or corporation if at any time it does not have all the qualifications prescribed by the section of this chapter under which it qualified for registration.

History: En. Sec. 23, Ch. 118, L. 1969; amd. Sec. 4, Ch. 207, L. 1974; R.C.M. 1947, 66-1835.

Cross-References

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

37-50-337 through 37-50-340 reserved.

37-50-341. Initiation of proceedings — hearings and rulemaking. (1) The board may initiate proceedings under this chapter either on its own motion or on the complaint of a person.

(2) Hearings and rulemaking proceedings shall be governed in all respects by the Montana Administrative Procedure Act.

History: En. Sec. 24, Ch. 118, L. 1969; amd. Sec. 175, Ch. 350, L. 1974; R.C.M. 1947, 66-1836.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

37-50-342. Violation. Any person who violates any provision of this chapter or the rules of the board is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500, by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment.

History: **En. Sec. 28, Ch. 118, L. 1969; R.C.M. 1947, 66-1840; amd. Sec. 19, Ch. 335, L. 1983.**

Compiler's Comments

1983 Amendment: Rewrote section that previously read: "Any person who violates any provision of 37-50-301 shall be guilty of a misdemeanor."

Cross-References

Penalty when none specified, 46-18-212.

Part 4

Miscellaneous Provisions

37-50-401. False statements by accountants — misdemeanor — penalty. Any person practicing as an accountant, public accountant, auditor, or certified public accountant in this state who, because of negligence, gross inefficiency, or willfulness, shall issue or permit the issuance of any false statement of the financial transactions, standing, or condition of any corporation, partnership, or individual business undertaking shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than $500 or more than $2,000 or imprisoned for a period of not less than 90 days or more than 1 year or subjected to both said fine and imprisonment, in the discretion of the court.

History: **En. Sec. 8, Ch. 46, L. 1933; re-en. Sec. 3241.8, R.C.M. 1935; R.C.M. 1947, 66-1808.**

37-50-402. Privileged communications. Except by permission of the client or person or firm or corporation engaging him or the heirs, successors, or personal representatives of such client or person or firm or corporation and except for the expression of opinions on financial statements, no certified public accountant, licensed public accountant, or employee thereof shall be required to nor shall he voluntarily disclose or divulge information of which he may have become possessed relative to and in connection with any professional services as a public accountant. The information derived from or as a result of such professional services shall be deemed confidential and privileged. The provisions of this section shall not apply to the testimony or documents of a public accountant furnished pursuant to a subpoena in a court of competent jurisdiction or a board proceeding.

History: **En. Sec. 29, Ch. 118, L. 1969; R.C.M. 1947, 66-1841; amd. Sec. 20, Ch. 335, L. 1983.**

Compiler's Comments

1983 Amendment: In last sentence inserted "or documents" after "testimony"; substituted "furnished" for "given"; and inserted "or a board proceeding" at end of section.

CHAPTER 51

REAL ESTATE BROKERS AND SALESMEN

Part 1 — General

Section

37-51-101. Repealed.
37-51-102. Definitions.

37-51-103. Exemptions.
37-51-104. Chapter supplemental to deceptive practices law.

Part 2 — Board of Realty Regulation

37-51-201. Chairman — seal — records — prohibition on membership in real estate associations.
37-51-202. General licensing power.
37-51-203. Rulemaking power.
37-51-204. Educational programs and continuing education.
37-51-205. Compensation of members — expenses.
37-51-206. Attorney general to act as attorney for the board.
37-51-207. Schedule of fees.
37-51-208. Deposit of money not otherwise provided for.

Part 3 — Licensing

37-51-301. License required — limited to persons.
37-51-302. Broker or salesman license — qualifications of applicant.
37-51-303. Broker or salesman examination.
37-51-304. Repealed.
37-51-305. License — form — delivery — display — pocket card.
37-51-306. Transactions with nonresidents and with nonlicensed brokers or salesmen — reciprocity — consent to legal process.
37-51-307. Directory of licensees.
37-51-308. Broker's office — notice to department of change of address.
37-51-309. Broker owner — broker associate — salesman — notice to department of change of association.
37-51-310. Annual renewal.
37-51-311. Fees — deposit of fees.
37-51-312. No taxation by municipality.
37-51-313 through 37-51-320 reserved.
37-51-321. Revocation or suspension of license — initiation of proceedings — grounds.
37-51-322. Right to notice and hearing.
37-51-323. Penalties — criminal — civil.

Part 4 — Miscellaneous Provisions

37-51-401. Action for compensation limited to licensed broker or salesman.

Part 5 — Recovery Account

37-51-501. Real estate recovery account established — minimum balance — interest.
37-51-502. Initial licensure and additional assessment.
37-51-503. Claims against fund — orders for payment.
37-51-504. Form of application.
37-51-505. Motion to dismiss application.
37-51-506. Hearing on application.
37-51-507. Payment from account.
37-51-508. Limitation of payment — pro rata distribution.
37-51-509. Claims satisfied in order of filing.
37-51-510. Deposits by board.
37-51-511. Subrogation rights of board.
37-51-512. Other disciplinary powers unimpaired — effect of repayment to fund.

Part 1

General

37-51-101. Repealed. Sec. 14, Ch. 497, L. 1979.

History: En. Sec. 1, Ch. 250, L. 1963; amd. Sec. 1, Ch. 261, L. 1969; amd. Sec. 177, Ch. 350 L. 1974; R.C.M. 1947, 66-1924(1).

37-51-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Account" means the real estate recovery account established in 37-51-501.

(2) "Board" means the board of realty regulation provided for in 2-15-1867.

(3) "Broker" includes an individual who for another or for a fee, commission, or other valuable consideration or who with the intent or expectation of receiving the same negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements thereon or collects rents or attempts to collect rents or advertises or holds himself out as engaged in any of the foregoing activities. The term "broker" also includes an individual employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition thereof at a salary or for a fee, commission, or any other consideration. The term "broker" also includes an individual who engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which he undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers, or both, and any person who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease.

(4) "Broker associate" means a broker who associates with a broker owner and does not own an interest in a real estate firm.

(5) "Broker owner" means a broker who owns or has a financial interest in a real estate firm.

(6) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(7) "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

(8) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

(9) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

(10) "Salesman" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

History: En. Sec. 2, Ch. 250, L. 1963; amd. Sec. 2, Ch. 261, L. 1969; amd. Sec. 178, Ch. 350, L. 1974; amd. Sec. 1, Ch. 133, L. 1975; R.C.M. 1947, 66-1925; amd. Sec. 1, Ch. 188, L. 1979; amd. Sec. 1, Ch. 306, L. 1979; amd. Sec. 3, Ch. 497, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 688, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (1).

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (5) (now (6)); changed internal references to the department and the board.

37-51-103. Exemptions. A single act performed for a commission or compensation of any kind in the buying, selling, exchanging, leasing, or renting of real estate or in negotiating therefor for others, except as hereinafter specified, shall constitute the person performing any of such acts a real estate broker or real estate salesman. The provisions of this chapter, however, shall not:

(1) apply to any person who, as owner or lessor, shall perform any of the aforesaid acts with reference to property owned or leased by himself or to an auctioneer employed by the owner or lessor to aid and assist in conducting a public sale held by such owner or lessor;

(2) apply to any person acting as attorney-in-fact under the duly executed power of attorney from the owner of any real estate authorizing the final consummation of any contract for the purchase, sale, exchange, renting, or leasing of any real estate;

(3) be construed to include in any way the services rendered by any attorney at law in the performance of his duty as such attorney at law;

(4) apply to any person duly appointed by a court for purpose of evaluation or appraising an estate in a probate matter;

(5) be held to include, while acting as such, a receiver, a trustee in bankruptcy, an administrator or executor, any person selling real estate under order of any court, a trustee under a trust agreement, deed of trust, or will, or an auctioneer employed by a receiver, trustee in bankruptcy, administrator, executor, or trustee to aid and assist in conducting a public sale held by any such officer;

(6) apply to public officials in the conduct of their official duties;

(7) apply to any person, partnership, association, or corporation, foreign or domestic, performing any act with respect to prospecting, leasing, drilling, or operating land for hydrocarbons and hard minerals or disposing of any hydrocarbons, hard minerals, or mining rights therein, whether upon a royalty basis or otherwise; or

(8) apply to persons acting as managers of housing complexes for low-income persons, which are subsidized, directly or indirectly, by this state or an agency or subdivision thereof or by the government of the United States or an agency thereof.

History: En. Sec. 3, Ch. 250, L. 1963; amd. Sec. 1, Ch. 385, L. 1977; R.C.M. 1947, 66-1926.

37-51-104. Chapter supplemental to deceptive practices law. Nothing contained herein may be construed to amend or modify 45-6-317 or 45-6-318. This chapter shall be construed to be supplemental to 45-6-317 and 45-6-318.

History: En. Sec. 25, Ch. 250, L. 1963; amd. Sec. 16, Ch. 101, L. 1977; R.C.M. 1947, 66-1946.

Part 2

Board of Realty Regulation

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1867.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-51-201. Chairman — seal — records — prohibition on membership in real estate associations. (1) The members of the board shall elect a chairman from among their number.

(2) The board shall adopt a seal of a design as it shall prescribe. Copies of records and papers kept by the department, certified by the chairman and authenticated by the seal of the board, shall be received in evidence in courts with like effect as the original. Records of the board are open to public inspection under rules it prescribes.

(3) The department shall keep a record of proceedings, transactions, communications, and official acts of the board; be custodian of the records of the board; and cause to be performed other duties as the board, on the written request of two or more members of the board or at other times as the chairman in his discretion, considers necessary.

(4) Neither the chairman nor an employee of the department hired to provide services to the board may be an officer or paid employee of any real estate association or group of real estate dealers or brokers.

History: (1)En. 66-1927.1 by Sec. 2, Ch. 378, L. 1977; Sec. 66-1927.1, R.C.M. 1947; (2) thru (4)En. Sec. 4, Ch. 250, L. 1963; amd. Sec. 179, Ch. 350, L. 1974; amd. Sec. 36, Ch. 439, L. 1975; Sec. 66-1927, R.C.M. 1947; R.C.M. 1947, 66-1927(2), (4), 66-1927.1.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Public records, Title 2, ch. 6.

Entries in official books and records prima facie evidence, 26-1-605.

Entry made by officer or Board prima facie evidence, 26-1-606.

Requirement of authentication or identification, Rule 901, Montana Rules of Evidence (see Title 26, ch. 10).

Self-authentication, Rule 902, Montana Rules of Evidence (see Title 26, ch. 10).

Public records, Rule 1005, Montana Rules of Evidence (see Title 26, ch. 10).

Duties of Department, 37-1-101.

37-51-202. General licensing power. The board may regulate the issuance of licenses and revoke or suspend licenses issued under this chapter.

History: En. Sec. 8, Ch. 250, L. 1963; amd. Sec. 182, Ch. 350, L. 1974; R.C.M. 1947, 66-1931.

37-51-203. Rulemaking power. The board shall from time to time adopt rules to carry out the provisions of this chapter.

History: En. Sec. 4, Ch. 250, L. 1963; amd. Sec. 179, Ch. 350, L. 1974; amd. Sec. 36, Ch. 439, L. 1975; R.C.M. 1947, 66-1927(1).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-51-204. Educational programs and continuing education. (1) The board may, subject to 37-1-101, conduct, hold, or assist in conducting or holding real estate clinics, meetings, courses, or institutes and incur necessary expenses in this connection.

(2) The board may assist libraries and educational institutions in sponsoring studies and programs for the purpose of raising the standards of the real estate business and the competency of licensees.

(3) The board may prescribe by rule continuing education requirements for all licensees, not to exceed 15 classroom or equivalent hours in any 2-year

period, including proof of conformance, but except as provided in 37-51-302 the board may not require examination of licensees.

History: En. Sec. 20, Ch. 250, L. 1963; amd. Sec. 190, Ch. 350, L. 1974; R.C.M. 1947, 66-1943; amd. Sec. 1, Ch. 269, L. 1985.

Compiler's Comments
1985 Amendment: Inserted (3).

37-51-205. Compensation of members — expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 4, Ch. 250, L. 1963; amd. Sec. 179, Ch. 350, L. 1974; amd. Sec. 36, Ch. 439, L. 1975; R.C.M. 1947, 66-1927(3); amd. Sec. 4, Ch. 497, L. 1979; amd. Sec. 29, Ch. 474, L. 1981.

Compiler's Comments
1981 Amendment: Substituted section for "Each member of the board shall receive as compensation for each day actually spent on his official duties the sum of $25 and travel expenses, as provided for in 2-18-501 through 2-18-503, connected with the performance of duties for the board".

37-51-206. Attorney general to act as attorney for the board. The attorney general shall act as attorney for the board in actions and proceedings brought by or against it under this chapter. Fees and expenses of the attorney general acting in this capacity shall be paid out of board moneys in the state special revenue fund.

History: En. Sec. 21, Ch. 250, L. 1963; amd. Sec. 191, Ch. 350, L. 1974; R.C.M. 1947, 66-1944; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments
1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Cross-References
Duties of Attorney General, 2-15-501.

37-51-207. Schedule of fees. The board shall adopt a schedule of fees to be charged by the department and to be paid into the state special revenue fund for the use of the board. The fees charged must be reasonably related to the cost incurred in regulating the real estate industry.

History: En. Sec. 5, Ch. 497, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments
1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Cross-References
Adoption and publication of rules, Title 2, ch. 4, part 3.
Licensing boards to establish fees commensurate with costs, 37-1-134.

37-51-208. Deposit of money not otherwise provided for. Whenever money is received by the board or by the department for the use of the board and there is no provision for the disposition or deposit of the money, the money is to be deposited in the state special revenue fund for the use of the board.

History: En. Sec. 1, Ch. 515, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments
1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-51-301. License required — limited to persons. (1) It is unlawful for a person to engage in or conduct, directly or indirectly, or to advertise or hold himself out as engaging in or conducting the business or acting in the capacity of a real estate broker or a real estate salesman within this state without a license as a broker or salesman or otherwise complying with this chapter.

(2) Corporations, partnerships, and associations may not be licensed under this chapter. A corporation or a partnership may act as a real estate broker if every corporate officer and every partner performing the functions of a "broker", as defined in 37-51-102(2), is licensed as a broker. All officers of a corporation or all members of a partnership acting as a broker are in violation of this chapter unless there is full compliance with this subsection.

History: En. Sec. 1, Ch. 250, L. 1963; amd. Sec. 1, Ch. 261, L. 1969; amd. Sec. 177, Ch. 350, L. 1974; R.C.M. 1947, 66-1924(2), (3).

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

37-51-302. Broker or salesman license — qualifications of applicant. (1) Licenses may be granted only to individuals considered by the board to be of good repute and competent to transact the business of a broker or salesman in a manner as to safeguard the interests of the public.

(2) An applicant for a broker's license shall:

(a) be at least 18 years of age;

(b) have graduated from an accredited high school or completed an equivalent education as determined by the board;

(c) have been actively engaged as a licensed real estate salesman for a period of 2 years or have had experience or special education equivalent to that which a licensed real estate salesman ordinarily would receive during this 2-year period as determined by the board, except that if the board finds that an applicant could not obtain employment as a licensed real estate salesman because of conditions existing in the area where he resides, the board may waive this experience requirement;

(d) file an application for license with the department; and

(e) furnish written evidence that he has completed 60 classroom or equivalent hours (in addition to those required to secure a salesman's license) in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law, real estate finance, and related topics.

(3) The board shall require information it considers necessary from an applicant to determine his honesty, trustworthiness, and competency.

(4) (a) An applicant for a salesman's license shall:

(i) be at least 18 years of age;

(ii) have received credit for completion of 2 years of full curriculum study at an accredited high school or completed an equivalent education as determined by the board;

(iii) file an application for license with the department; and

(iv) furnish written evidence that he has completed 60 classroom or equivalent hours in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law and ethics, real estate finance, and related topics.

(b) His application shall be accompanied by the recommendation of the licensed broker by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect.

(5) The department shall issue to each licensed broker and to each licensed salesman a license and a pocket card in a form and size as the board prescribes.

(6) A broker's license must indicate whether the broker is a broker owner or a broker associate.

History: En. Sec. 6, Ch. 250, L. 1963; amd. Sec. 3, Ch. 261, L. 1969; amd. Sec. 10, Ch. 423, L. 1971; amd. Sec. 180, Ch. 350, L. 1974; R.C.M. 1947, 66-1929; amd. Sec. 2, Ch. 306, L. 1979; amd. Sec. 7, Ch. 341, L. 1981; amd. Sec. 2, Ch. 269, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (2)(e) and (4)(a)(iv).

1981 Amendment: Deleted former subsection (2)(a) requiring U.S. citizenship.

Cross-References

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

37-51-303. Broker or salesman examination. (1) In addition to proof of honesty, trustworthiness, and good reputation, an applicant whose application is then pending shall satisfactorily pass a written examination prepared by or under the supervision of the board. The examination shall be given at least once each 6 months and at places within the state the board prescribes.

(2) (a) The examination for a salesman's license shall include:

(i) business ethics, writing, composition, arithmetic, elementary principles of land economics and appraisal;

(ii) a general knowledge of the statutes of this state relating to deeds, mortgages, contracts of sale, agency, brokerage, and of this chapter.

(b) If the applicant passes one subject portion of the examination, (2)(a)(i) or (2)(a)(ii), he shall not be required to repeat that portion of the examination if he passes the remaining portion within 12 months.

(3) The examination for a broker's license shall be of a more exacting nature and scope and more stringent than the examination for a salesman's license.

History: En. Sec. 7, Ch. 250, L. 1963; amd. Sec. 181, Ch. 350, L. 1974; R.C.M. 1947, 66-1930; amd. Sec. 1, Ch. 595, L. 1981.

Compiler's Comments

1981 Amendment: Deleted former subsection (4) requiring an applicant, following two failures, to wait 6 months before another reexamination.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-51-304. Repealed. Sec. 15, Ch. 688, L. 1985.

History: En. Sec. 10, Ch. 250, L. 1963; amd. Sec. 4, Ch. 261, L. 1969; amd. Sec. 184, Ch. 350, L. 1974; amd. Sec. 15, Ch. 101, L. 1977; R.C.M. 1947, 66-1933.

37-51-305. License — form — delivery — display — pocket card. (1) The board shall prescribe the form of license. A license shall bear the seal of the board.

(2) The license of a real estate salesman shall be delivered or mailed to the real estate broker with whom the real estate salesman is associated and shall be kept in the custody and control of the broker.

(3) A broker shall display his own license conspicuously in his place of business.

(4) The department shall annually prepare and deliver a pocket card certifying that the person whose name appears is a registered real estate broker or a registered real estate salesman, stating the period for which fees have been paid and, on real estate salesman's cards only, the name and address of the broker with whom he is associated.

History: En. Sec. 9, Ch. 250, L. 1963; amd. Sec. 183, Ch. 350, L. 1974; R.C.M. 1947, 66-1932; amd. Sec. 3, Ch. 306, L. 1979.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Jurisdiction of persons, Rule 4B, M.R.Civ.P. (see Title 25, ch. 20).

37-51-306. Transactions with nonresidents and with nonlicensed brokers or salesmen — reciprocity — consent to legal process. (1) It is unlawful for a licensed broker to employ or compensate, directly or indirectly, a person for performing the acts regulated by this chapter who is not a licensed broker or licensed salesman. However, a licensed broker may pay a commission to a licensed broker of another state if the nonresident broker has not conducted and does not conduct in this state a service for which a fee, compensation, or commission is paid. This subsection does not limit the next subsection.

(2) A nonresident of this state actively engaged in the real estate business who maintains a place of business in another state and who has been licensed in the other state to conduct this business in that state may obtain a license as a broker in this state by complying with this chapter. However, this section applies only to brokers of those other states which offer the same privileges to the licensed brokers of this state. The nonresident licensee need not maintain a place of business in this state. The board may authorize the department to license a nonresident broker without examination if he files with the department an authorized or certified copy of the license issued to the nonresident for conducting this business in another state and pays to the department the same license fee as is required for obtaining a broker's license in this state. The board may in its discretion refuse to authorize the department to issue a broker's license to an applicant who is not a resident of this state.

(3) A nonresident broker shall file an irrevocable written consent that legal actions arising out of a commenced or completed transaction may be commenced against the nonresident broker in a county of this state which may be appropriate and designated by Title 25, chapter 2, part 1. The consent shall provide that service of summons in this action may be served on the department for and on behalf of the nonresident broker, and this service is

sufficient to give the court jurisdiction over the nonresident broker and his salesman or agent conducting a transaction in a county. The consent shall be acknowledged and, if made by a corporation, shall be authenticated by its seal.

History: En. Sec. 13, Ch. 250, L. 1963; amd. Sec. 187, Ch. 350, L. 1974; R.C.M. 1947, 66-1936.

Cross-References

Rules for determining residency, 1-1-215.

Prohibition on distribution or sale of mailing lists, 2-6-109.

37-51-307. Directory of licensees. The department shall annually publish a directory of licensees, including a list of licenses suspended and revoked, which shall contain such other data the board determines to be in the interest of real estate licensees and the public.

History: En. Sec. 22, Ch. 250, L. 1963; amd. Sec. 192, Ch. 350, L. 1974; R.C.M. 1947, 66-1945.

Cross-References

Prohibition on distribution or sale of mailing lists, 2-6-109.

37-51-308. Broker's office — notice to department of change of address. (1) A resident licensed broker shall maintain a fixed office in this state. The original license of the broker and the original license of each salesman associated or under contract with the broker shall be prominently displayed in the office. The address of the office and any branch office shall be designated on the broker's license.

(2) In case of removal from the designated address, the licensee shall notify the department before removal or within 10 days thereafter, designating the new location of this office and paying the required fee, whereupon a license for the new location must be issued for the unexpired period.

History: En. Sec. 12, Ch. 250, L. 1963; amd. Sec. 186, Ch. 350, L. 1974; R.C.M. 1947, 66-1935(1); amd. Sec. 21, Ch. 22, L. 1979; amd. Sec. 4, Ch. 306, L. 1979.

37-51-309. Broker owner — broker associate — salesman — notice to department of change of association. (1) A salesman may not be associated with or under contract to more than one licensed broker owner, nor may he perform services for a broker other than the one designated on the license issued to the salesman.

(2) When a licensed salesman desires to change his association or contractual relationship from one licensed broker to another, he shall notify the department promptly in writing of these facts, pay the required fee, and return his license and pocket card, and a new license and pocket card shall be issued. No salesman shall directly or indirectly work for or with a broker owner until he has been issued a license to work for or with that broker owner. On termination of a salesman's association or contractual relationship, he shall surrender his license and pocket card to his broker owner who shall return them to the department for cancellation.

(3) Only one license shall be issued to a salesman to be in effect at one time.

(4) A broker associate may not be associated with more than one broker owner.

History: En. Sec. 12, Ch. 250, L. 1963; amd. Sec. 186, Ch. 350, L. 1974; R.C.M. 1947, 66-1935(2), (3); amd. Sec. 5, Ch. 306, L. 1979.

37-51-310. Annual renewal. (1) Except as provided in subsection (2), annual fees are due and payable for the ensuing year during the month of December of each year. Failure to remit annual fees before January 1 automatically cancels the license, but otherwise the license remains in effect continuously from the date of issuance unless suspended or revoked by the board for just cause.

(2) The board may by rule change the annual renewal and automatic cancellation dates provided for in subsection (1).

History: En. Sec. 11, Ch. 250, L. 1963; amd. Sec. 185, Ch. 350, L. 1974; amd. Sec. 13, Ch. 533, L. 1977; R.C.M. 1947, 66-1934(3); amd. Sec. 1, Ch. 275, L. 1985.

Compiler's Comments

1985 Amendment: In (1) inserted exception clause at beginning of subsection; and inserted (2).

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

37-51-311. Fees — deposit of fees. (1) The fees prescribed by the board shall be charged by the department and paid into the state special revenue fund for the use of the board, subject to 37-1-101(6).

(2) The board shall charge an annual fee from a licensee who wishes to be placed in an inactive status. A licensee who is placed in an inactive status by the board and who has paid the required fee need not pay any fee assessed by the board for the purpose of funding the real estate recovery account during the period the licensee remains in inactive status.

History: En. Sec. 11, Ch. 250, L. 1963; amd. Sec. 185, Ch. 350, L. 1974; amd. Sec. 13, Ch. 533, L. 1977; R.C.M. 1947, 66-1934(1), (2); amd. Sec. 6, Ch. 306, L. 1979; amd. Sec. 65, Ch. 345, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 688, L. 1985.

Compiler's Comments

1985 Amendment: In (2) near middle of second sentence, after "need not", substituted remainder of sentence for "file a bond with the department as provided in 37-51-304"; and deleted former (3) that read: "The board shall adopt a schedule of fees. However, a fee once set for one of the items for which a fee is charged cannot be increased or decreased until at least 1 year has passed since the fee for that particular item was last increased or decreased".

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

1981 Amendment: Deleted "following" after "The" at the beginning of (1); inserted "prescribed by the board" after "fees" near the beginning of (1); deleted subsections (1)(a) through (1)(k) which specified the maximum fees for various licenses; substituted "charge an annual fee" for "charge a $5 annual fee" in the first sentence of (2); and deleted "within the limits set by this section" after "adopt a schedule of fees" at the end of (3).

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Recovery account assessment fee, 37-51-502.

37-51-312. No taxation by municipality. No license fee or tax may be imposed on a real estate broker or salesman by a municipality or any other political subdivision of the state.

History: En. Sec. 11, Ch. 250, L. 1963; amd. Sec. 185, Ch. 350, L. 1974; amd. Sec. 13, Ch. 533, L. 1977; R.C.M. 1947, 66-1934(4).

37-51-313 through 37-51-320 reserved.

37-51-321. Revocation or suspension of license — initiation of proceedings — grounds. The board may on its own motion and shall on the sworn complaint in writing of a person investigate the actions of a real estate broker or a real estate salesman, subject to 37-1-101 and 37-1-121, and may revoke or suspend a license issued under this chapter when the broker or salesman has been found guilty by a majority of the board of any of the following practices:

(1) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio, display, or other nature, which advertising in any material particular or in any material way misrepresents any property, terms, values, policies, or services of the business conducted. A broker who operates under a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise name he does not incorporate his own name in the franchise name or logotype or does not conspicuously display, on his letterhead and other printed materials available to the public, a statement that his office is independently owned and operated. The board may not adopt advertising standards more stringent than those set forth in this subsection.

(2) making any false promises of a character likely to influence, persuade, or induce;

(3) pursuing a continued and flagrant course of misrepresentation or making false promises through agents or salesmen or any medium of advertising or otherwise;

(4) use of the term "realtor" by a person not authorized to do so or using another trade name or insignia of membership in a real estate organization of which the licensee is not a member;

(5) failing to account for or to remit money coming into his possession belonging to others;

(6) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;

(7) acting in a dual capacity of broker and undisclosed principal in a transaction;

(8) guaranteeing, authorizing, or permitting a person to guarantee future profits which may result from the resale of real property;

(9) offering real property for sale or lease without the knowledge and consent of the owner or his authorized agent or on terms other than those authorized by the owner or his authorized agent;

(10) inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract with another principal;

(11) accepting employment or compensation for appraising real property contingent on the reporting of a predetermined value or issuing an appraisal report on real property in which he has an undisclosed interest;

(12) negotiating a sale, exchange, or lease of real property directly with an owner or lessee if he knows that the owner has a written, outstanding contract in connection with the property granting an exclusive agency to another broker;

(13) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(14) representing or attempting to represent a real estate broker other than the employer without the express knowledge or consent of the employer;

(15) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time of its execution;

(16) paying a commission in connection with a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesman under this chapter;

(17) intentionally violating a rule adopted by the board in the interests of the public and in conformity with this chapter;

(18) failing, if a salesman, to place, as soon after receipt as is practicably possible, in the custody of his registered broker, deposit money or other money entrusted to him as salesman by a person;

(19) demonstrating his unworthiness or incompetency to act as a broker or salesman; or

(20) conviction of a felony.

History: En. Sec. 14, Ch. 250, L. 1963; amd. Sec. 5, Ch. 261, L. 1969; amd. Sec. 188, Ch. 350, L. 1974; R.C.M. 1947, 66-1937; amd. Sec. 2, Ch. 188, L. 1979.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

37-51-322. Right to notice and hearing. When the board has investigated an application for a real estate broker's or salesman's license or, subject to 37-1-101 and 37-1-121, investigated the actions of a real estate broker or salesman on the sworn complaint in writing of a person or on its own motion and the investigation has revealed reasonable grounds for denying the application or reasonable indication of a violation of this chapter as cause for revoking or suspending a license issued to a real estate broker or salesman, the board shall, before denying the application or revoking or suspending the license, give notice and set the matter for hearing.

History: En. Sec. 8, Ch. 261, L. 1969; amd. Sec. 189, Ch. 350, L. 1974; R.C.M. 1947, 66-1938.1.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

37-51-323. Penalties — criminal — civil. (1) Any individual acting as a broker or salesman without a license or while his license is suspended or revoked or any person who violates any provision of this chapter shall be guilty of a misdemeanor and upon conviction thereof by a district court of this state shall be punishable by a fine of not less than $100 or more than $500 or by imprisonment for a term not to exceed 90 days, or both. Upon conviction of a second or subsequent violation, the person shall be punishable by a fine of not less than $500 or more than $2,000 or by imprisonment for a term not to exceed 6 months, or both.

(2) In case any person in a civil action is found guilty of having received any money or the equivalent thereof as a fee, commission, compensation, or profit by or in consequence of a violation of any provision of this chapter, he shall in addition be liable to a penalty of not less than the amount of the sum of money so received and not more than three times the sum so received, as

may be determined by the court, which penalty may be recovered in any court of competent jurisdiction by any person aggrieved.

History: **En. Sec. 17, Ch. 250, L. 1963; amd. Sec. 6, Ch. 261, L. 1969; amd. Sec. 1, Ch. 541, L. 1977; R.C.M. 1947, 66-1940.**

Part 4

Miscellaneous Provisions

37-51-401. Action for compensation limited to licensed broker or salesman. Any person engaged in the business of or acting in the capacity of a real estate broker or real estate salesman within this state shall not be permitted to bring or maintain any action in the courts for the collection of compensation for the sale or lease or otherwise disposing of real estate without first alleging and proving that such person was a duly licensed real estate broker or real estate salesman or authorized to act as a broker under the provisions of this chapter at the time the alleged cause of action or claim arose.

History: **En. Sec. 18, Ch. 250, L. 1963; amd. Sec. 7, Ch. 261, L. 1969; R.C.M. 1947, 66-1941.**

Part 5

Recovery Account

37-51-501. Real estate recovery account established — minimum balance — interest. (1) There is established in the state special revenue fund for the use of the board a real estate recovery account. The account is used to provide payment of claims based on unsatisfied judgments against persons licensed under the provisions of this chapter. The real estate recovery account is statutorily appropriated as provided in 17-7-502.

(2) The board shall maintain a minimum balance of $100,000 in the account. The board may in its discretion transfer any money in excess of that amount from the account to the state special revenue fund for the use of the board in accordance with the purposes provided in 37-51-204.

(3) Money earned on the investment of funds in the account must be credited to the account annually.

History: **En. Sec. 3, Ch. 688, L. 1985.**

37-51-502. Initial licensure and additional assessment. (1) A person initially licensed under the provisions of this chapter in 1986 or thereafter shall, in addition to paying any license fee required under this chapter, be assessed the sum of $35 at the time of licensure, to be credited to the real estate recovery account.

(2) If at any time the balance in the real estate recovery account is less than $100,000, every person licensed under this chapter may be assessed a sum, which sum is determined by the board to be sufficient to maintain the balance of the account at a minimum of $100,000.

History: **En. Sec. 4, Ch. 688, L. 1985.**

37-51-503. Claims against fund — orders for payment. (1) Whenever a person obtains a final judgment in any court of competent jurisdiction against any person licensed under this chapter for the conversion of trust funds or arising directly out of any act or transaction occurring on or after July 1, 1985, for which a license is required under this chapter, he may after executing on such final judgment file an application, in accordance with this section and 37-51-504, with the board for an order directing payment out of the account for any actual and direct loss unpaid on the judgment.

(2) No application or order for payment from the account may be made for:

(a) a judgment which has been satisfied;

(b) any amount in excess of $25,000 for any one licensee, regardless of the number of persons injured by acts of the licensee or number of parcels of real estate involved in the transaction or transactions;

(c) attorney fees and exemplary or punitive damages; or

(d) amounts remaining unpaid on any final judgment entered more than 2 years prior to the date of application.

(3) The application must be:

(a) served by certified mail, return receipt requested, upon the board, the licensee, and any other party to the transaction referred to in the application; and

(b) filed with the board along with an affidavit of service.

History: En. Sec. 5, Ch. 688, L. 1985.

Cross-References

Execution of judgment, Title 25, ch. 13.

Proceedings in aid of execution, Title 25, ch. 14.

37-51-504. Form of application. The person making application for payment from the account must show in the application:

(1) that he is not the spouse of the judgment debtor or the personal representative of such spouse;

(2) that he has obtained a judgment which satisfies the requirements of 37-51-503, stating the amount of the judgment and the amount unpaid on the date of the application;

(3) that he has, on the dates and at the times shown by the applicant, diligently pursued the remedies of execution and proceedings in aid of execution provided in Title 25, chapters 13 and 14, respectively;

(4) the amount of any money obtained as a result of the proceedings required to be shown in subsection (3) and the balance of the judgment remaining unpaid for which application is made; and

(5) that he has diligently pursued his remedies of execution and proceedings in aid of execution against any other person against whom he has a judgment as a result of the transaction for which he seeks recovery from the account.

History: En. Sec. 6, Ch. 688, L. 1985.

37-51-505. Motion to dismiss application. The licensee may request the board at any time to dismiss the application if it appears that the application is without merit. The motion may be supported by the affidavit of any person having knowledge of the facts and may be made on the basis that the application and the judgment referred to therein do not form the basis for a payable claim under 37-51-503 and 37-51-504. The board shall give the applicant at least 10 days' written notice of any motion to dismiss.

History: **En. Sec. 7, Ch. 688, L. 1985.**

37-51-506. Hearing on application. (1) Within 30 days of the filing of the affidavit of service, the board shall conduct a hearing upon the application. Upon the motion of either party, the board may continue the hearing up to 60 days and upon a showing of good cause may continue the hearing such further period as the board considers appropriate.

(2) At the hearing the board shall determine by a preponderance of the evidence the truth of any allegations made in the application and supporting documents that are challenged by the licensee.

History: **En. Sec. 8, Ch. 688, L. 1985.**

37-51-507. Payment from account. If the board finds after the hearing that an applicant has proved a valid claim against the account, the board shall enter an order requiring payment from the account of whatever sum it finds to be due under the provisions of this part.

History: **En. Sec. 9, Ch. 688, L. 1985.**

37-51-508. Limitation of payment — pro rata distribution. (1) The liability of the account may not exceed $25,000 for any one licensee until that licensee has repaid the account. If the $25,000 liability of the account is insufficient to pay in full the valid claims of all applications that have been filed against any one licensee and ordered to be paid, the $25,000 must be distributed among those claimants in the ratio that the amount ordered to be paid to any one claimant bears to the total amounts ordered to be paid or in such other manner as the board considers equitable; and upon such a distribution, all claims are considered satisfied by the amount so distributed. Distribution of such money must, at any time, be among the persons ordered to receive the same, without regard to the order or priority in which their respective judgments were obtained or their applications filed.

(2) Upon petition of any person, the board may require all existing applications for payment of claims against one licensee to be joined in one proceeding for the purpose of a timely determination of their respective rights to the money in the account.

(3) An application for payment of a claim against a licensee filed after the distribution of the full amount for which the account is liable for that licensee must be denied by the board.

History: **En. Sec. 10, Ch. 688, L. 1985.**

37-51-509. Claims satisfied in order of filing. If account funds are insufficient to satisfy any claim or portion of a claim ordered to be paid on behalf of a licensee for whom the account liability of $25,000 has not been exceeded, the board shall, when sufficient money has been deposited in the account, satisfy such unpaid claims or portions of them in the order that the applications for such claims were originally filed pursuant to 37-51-503. The board shall pay accumulated interest beginning on the date of the order to pay at the judgment rate on each such unpaid claim.

History: **En. Sec. 11, Ch. 688, L. 1985.**

37-51-510. Deposits by board. Money received by the board under 37-51-511 must be deposited in the account and allocated exclusively for the purposes provided in this part.

History: **En. Sec. 12, Ch. 688, L. 1985.**

37-51-511. Subrogation rights of board. Upon payment of money from the account, the board is subrogated to all of the rights of the judgment creditor to the extent of the amount so paid and the judgment creditor is considered to have assigned to the board all of his right, title, and interest in the judgment to the extent of the amount paid from the account. Any amount and interest recovered by the board on the judgment must be deposited in the account.

History: **En. Sec. 13, Ch. 688, L. 1985.**

37-51-512. Other disciplinary powers unimpaired — effect of repayment to fund. Nothing contained in this part limits the authority of the board to take disciplinary action against any licensee under other provisions of this chapter, nor does the repayment in full of all obligations to the account by any licensee nullify or modify the effect of any other disciplinary action taken by the board under the provisions of this chapter.

History: **En. Sec. 14, Ch. 688, L. 1985.**

CHAPTER 52

TITLE ABSTRACTERS
(Repealed. Sec. 195, Ch. 575, L. 1981)

Chapter Compiler's Comments

Histories of Repealed Sections:

37-52-101. En. 66-2101.1 by Sec. 193, Ch. 350, L. 1974; R.C.M. 1947, 66-2101.1.

37-52-102. En. Secs. 17, 18, Ch. 105, L. 1931; re-en. Secs. 4139.17, 4139.18, R.C.M. 1935; R.C.M. 1947, 66-2117(part), 66-2118.

37-52-201. En. Sec. 3, Ch. 105, L. 1931; re-en. Sec. 4139.3, R.C.M. 1935; amd. Sec. 195, Ch. 350, L. 1974; R.C.M. 1947, 66-2103.

37-52-202. En. Sec. 4, Ch. 105, L. 1931; re-en. Sec. 4139.4, R.C.M. 1935; amd. Sec. 124, Ch. 147, L. 1963; amd. Sec. 196, Ch. 350, L. 1974; amd. Sec. 1, Ch. 214, L. 1975; amd. Sec. 37, Ch. 439, L. 1975; amd. Sec. 17, Ch. 101, L. 1977; R.C.M. 1947, 66-2104(2)(1).

37-52-203. En. Sec. 5, Ch. 105, L. 1931; re-en. Sec. 4139.5, R.C.M. 1935; amd. Sec. 197, Ch. 350, L. 1974; R.C.M. 1947, 66-2105.

37-52-301. En. Sec. 1, Ch. 105, L. 1931; re-en. Sec. 4139.1, R.C.M. 1935; R.C.M. 1947, 66-2101.

37-52-302. En. Sec. 8, Ch. 105, L. 1931; re-en. Sec. 4139.8, R.C.M. 1935; amd. Sec. 198, Ch. 350, L. 1974; amd. Sec. 4, Ch. 215, L. 1975; R.C.M. 1947, 66-2108.

37-52-303. En. Sec. 10, Ch. 105, L. 1931; re-en. Sec. 4139.10, R.C.M. 1935; amd. Sec. 199, Ch. 350, L. 1974; amd. Sec. 5, Ch. 215, L. 1975; R.C.M. 1947, 66-2110.

37-52-304. En. Sec. 11, Ch. 105, L. 1931; re-en. Sec. 4139.11, R.C.M. 1935; amd. Sec. 200, Ch. 350, L. 1974; amd. Sec. 6, Ch. 215, L. 1975; R.C.M. 1947, 66-2111.

37-52-305. En. Sec. 4, Ch. 105, L. 1931; re-en. Sec. 4139.4, R.C.M. 1935; amd. Sec. 124, Ch. 147, L. 1963; amd. Sec. 196, Ch. 350, L. 1974; amd. Sec. 1, Ch. 214, L. 1975; amd. Sec. 37, Ch. 439, L. 1975; amd. Sec. 17, Ch. 101, L. 1977; R.C.M. 1947, 66-2104(2)(2).

37-52-306. En. Sec. 14, Ch. 105, L. 1931; re-en. Sec. 4139.14, R.C.M. 1935; amd. Sec. 202, Ch. 350, L. 1974; R.C.M. 1947, 66-2114.

37-52-307 through 37-52-310 reserved.

37-52-311. En. Sec. 15, Ch. 105, L. 1931; re-en. Sec. 4139.15, R.C.M. 1935; amd. Sec. 203, Ch. 350, L. 1974; amd. Sec. 2, Ch. 541, L. 1977; R.C.M. 1947, 66-2115.

37-52-312. En. Sec. 17, Ch. 105, L. 1931; re-en. Sec. 4139.17, R.C.M. 1935; R.C.M. 1947, 66-2117(part).

37-52-401. En. Sec. 16, Ch. 105, L. 1931; re-en. Sec. 4139.16, R.C.M. 1935; R.C.M. 1947, 66-2116.

37-52-402. En. Sec. 3, Ch. 43, L. 1915; re-en. Sec. 4141, R.C.M. 1921; R.C.M. 1947, 66-2119.

CHAPTERS 53 THROUGH 59

RESERVED

CHAPTER 60

PRIVATE INVESTIGATORS AND PATROLMEN

Part 1 — General

Section
37-60-101. Definitions.
37-60-102. Repealed.
37-60-103. Purpose.
37-60-104. Restrictions on contract security company and proprietary security organization.
37-60-105. Exemptions.

Part 2 — Director of Department—Board

37-60-201. Organization — meetings — records.
37-60-202. Rulemaking power.
37-60-203 through 37-60-210 reserved.
37-60-211. Compensation of board members — expenses.
37-60-212. Attorney general to act as attorney for the board.

Part 3 — Licensing

37-60-301. License required.
37-60-302. Qualifying agent and resident manager required — substitution.
37-60-303. License qualifications.
37-60-304. Licenses — application form and content.
37-60-305. Armed guards and investigators — registration requirements.
37-60-306. Unarmed guards and investigators — identification cards required — qualifications.
37-60-307. Action on application.
37-60-308. Temporary employment without registration or identification card — authority of board.
37-60-309. Form of license, registration, and identification card.
37-60-310. Display of license, registration, and identification card.
37-60-311. Repealed.
37-60-312. Annual renewal.
37-60-313. Repealed.
37-60-314. Nontransferability of license — record changes.
37-60-315 through 37-60-319 reserved.
37-60-320. Fees.
37-60-321. Suspension or revocation.
37-60-322. Surrender of licenses, registration, and identification cards.

Part 4 — Provisions Regulating Practice

37-60-401. Responsibility of licensee for conduct of employees.
37-60-402. Confidentiality of information — false reports — badges and uniforms — illegal entry.
37-60-403. Licensee advertising.
37-60-404. Duty to maintain employee records.
37-60-405. Approval of weapons.
37-60-406. Peace officer's casual employment.
37-60-407. Regulation of uniforms, badges, and equipment.
37-60-408. Restrictions on use of certain automatic dial-up systems.
37-60-409. Installation of new security alarm systems by electrician.

37-60-410 reserved.
37-60-411. Penalty.

Chapter Cross-References
Weapons, Title 45, ch. 8, part 3.
Search and seizure, Title 46, ch. 5.
Arrest, Title 46, ch. 6.

Part 1

General

37-60-101. Definitions. As used in this chapter, the following defini- ions apply:

(1) “Alarm response runner” means any individual employed by a contract ecurity company or a proprietary security organization to respond to security larm system signals.

(2) “Armed carrier service” means any person who transports or offers to ransport under armed private security guard from one place to another any urrency, documents, papers, maps, stocks, bonds, checks, or other items of alue that require expeditious delivery.

(3) “Armed private investigator” means a private investigator who at any ime wears, carries, possesses, or has access to a firearm in the performance f his duties.

(4) “Armed private security guard” means an individual employed by a ontract security company or a proprietary security organization whose prin- ipal duty is that of a security guard, armored car service guard, carrier ser- ice guard, or alarm response runner and who at any time wears, carries, ossesses, or has access to a firearm in the performance of his duties.

(5) “Armored car service” means any person who transports or offers to ansport under armed private security guard from one place to another any urrency, jewels, stocks, bonds, paintings, or other valuables of any kind in a ecially equipped motor vehicle that offers a high degree of security.

(6) “Board” means the board of private security patrolmen and investiga- rs provided for in 2-15-1891.

(7) “Branch office” means any office of a licensee within the state, other an its principal place of business within the state.

(8) “Contract security company” means any person who installs or main- ins a security alarm system, undertakes to provide a private security guard, arm response runner, armored car service, street patrol service, or armed rrier service on a contractual basis to another person who exercises no rection and control over the performance of the details of the services ndered.

(9) “Department” means the department of commerce provided for in 15-1801.

(10) “Insurance adjuster” means a person employed by an insurance com- ny, other than a private investigator, who for any consideration whatsoever nducts investigations in the course of adjusting or otherwise participating the disposal of any claims in connection with a policy of insurance but who es not perform surveillance activities or investigate crimes or wrongs com- itted or threatened against the United States or any state or territory ereof.

(11) "Licensee" means a person licensed under this chapter.

(12) "Person" includes any individual, firm, company, association, organization, partnership, and corporation.

(13) "Private investigator" means a person other than an insurance adjuster who for any consideration whatsoever makes or agrees to make any investigation with reference to:

(a) crimes or wrongs done or threatened against the United States or any state or territory thereof;

(b) the identity, habits, conduct, business, occupation, honesty, integrity, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, reputation, or character of any person;

(c) the location, disposition, or recovery of lost or stolen property;

(d) the cause or responsibility for fires, libels, losses, accidents, or injury to persons or property; or

(e) securing evidence to be used before any court, board, officer, or investigating committee.

(14) "Private security guard" means an individual employed to protect a person or property or both a person and property from criminal acts and whose duties include but are not limited to the prevention of unlawful entry, theft, criminal mischief, arson, or trespass on private property, or the direction of the movements of the public in public areas.

(15) "Proprietary security organization" means any person who employs a private security guard, an alarm response runner, armored car service, street patrol service, or armed carrier service on a routine basis solely for the purposes of that person and exerts direction and control over the performance of the details of the service rendered.

(16) "Qualifying agent" means, in the case of a corporation, a corporate employee employed in a management capacity or, in the case of a partnership, a general or unlimited partner meeting the qualifications set forth in this chapter for the operation of a contract security company, proprietary security organization, or private investigator, whichever is applicable.

(17) "Security alarm system" means an assembly of equipment and devices or a single device such as a solid state unit which plugs directly into a 110-volt AC line, designed to detect or signal or to both detect and signal unauthorized intrusion, movement, or criminal acts at a protected premises, to which signals police, private security guards, or alarm response runners are expected to respond. Fire alarm systems and alarm systems that monitor temperature, humidity, or any other atmospheric condition not directly related to the detection of an unauthorized intrusion or criminal act at a premises are not included within the meaning of this definition.

(18) "Street patrol service" means any contract security company or proprietary security organization that uses foot patrols, motor vehicles, or any other means of transportation to maintain public order or detect criminal activities in public areas or thoroughfares.

(19) "Unarmed private investigator" means a private investigator who does not wear, carry, possess, or have access to a firearm in the performance of his duties.

(20) "Unarmed private security guard" means an individual employed by a contract security company or a proprietary security organization whose principal duty is that of a private security guard, armored car service guard, or

alarm response runner, who does not wear, carry, possess, or have access to a firearm in the performance of those duties.

History: En. 66-3301 by Sec. 1, Ch. 234, L. 1974; R.C.M. 1947, 66-3301; amd. Sec. 15, Ch. 274, L. 1981; amd. Sec. 2, Ch. 550, L. 1983; amd. Sec. 1, Ch. 647, L. 1985.

Compiler's Comments

1985 Amendment: At end of (1) deleted last sentence that read: "A person whose sole function is to maintain or repair a security alarm system is not included within the meaning of this definition"; in (8) near beginning, after "who", inserted "installs or maintains a security alarm system"; and in (10), near beginning substituted "conducts investigations" for "conducts any of the investigations enumerated in subsection (13)" and near end, after "surveillance activities", inserted remainder of subsection.

1983 Amendment: Inserted (1) through (8), (10), and (13) through (20); deleted former (2), which read: "Director means the director of the department of commerce or his designee", and former (4), which read: "Manager means the ndividual under whose direction, control, charge, or management the business of a licensee is operated"; in (9) after "department of commerce" inserted "provided for in 2-15-1801"; and in (11) after "chapter" deleted "and includes but is not limited to private investigator and private patrol operator".

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (1) (now (9)); substituted "director of the department of commerce or his designee" for "director of the department of professional and occupational licensing" in (2) (now deleted).

Cross-References

Libel and slander, Title 27, ch. 1, part 8.

Criminal mischief and arson, Title 45, ch. 6, part 1.

Criminal trespass and burglary, Title 45, ch. 6, part 2.

Theft and related offenses, Title 45, ch. 6, part 3.

37-60-102. Repealed. Sec. 34, Ch. 550, L. 1983.

History: En. 66-3305 by Sec. 5, Ch. 234, L. 1974; R.C.M. 1947, 66-3305(1).

37-60-103. Purpose. The purpose of this chapter is to increase the evels of integrity, competency, and performance of private security personnel nd private investigators in order to safeguard the public health, safety, and welfare against illegal, improper, or incompetent actions committed by private ecurity personnel or private investigators.

History: En. 66-3305 by Sec. 5, Ch. 234, L. 1974; R.C.M. 1947, 66-3305(2); amd. Sec. 3, Ch. 50, L. 1983.

Compiler's Comments

1983 Amendment: Rewrote section which formerly read: "A private patrol operator or operator of a private patrol service within the meaning of this chapter is a person who, for any onsideration whatsoever:

(1) agrees to furnish or furnishes a watchman, guard, patrolman, or other person to protect persons or property or to prevent the theft, unlawful taking, loss, embezzlement, misappropriation, or concealment of any goods, wares, merchandise, money, bonds, stocks, notes, documents, papers, or property of any kind; or

(2) performs the service of such watchman, guard, patrolman, or other person for any of said purposes."

37-60-104. Restrictions on contract security company and proprietary security organization. No employee of a contract security company r proprietary security organization may make any investigation or investigaons except those that are incidental to the theft, loss, embezzlement, misappropriation, or concealment of any property or any other thing which he as been hired or engaged to protect, guard, or watch.

History: En. 66-3305 by Sec. 5, Ch. 234, L. 1974; R.C.M. 1947, 66-3305(3); amd. Sec. 4, Ch. 50, L. 1983.

ompiler's Comments

1983 Amendment: At beginning of section bstituted "No employee of a contract security company or proprietary security organization may" for "A person licensed as a private patrol operator only may not"; and after "other thing" deleted "enumerated in 37-60-103".

Cross-References

Theft and related offenses, Title 45, ch. 6, part 3.

37-60-105. Exemptions. This chapter does not apply to:

(1) any one person employed singly and exclusively by any one employer in connection with the affairs of such employer only and where there exists an employer-employee relationship and the employee is unarmed, does not wear a uniform, and is guarding inside a structure which at the time is not open to the public;

(2) an officer or employee of the United States of America or of this state or a political subdivision thereof while such officer or employee is engaged in the performance of his official duties;

(3) a person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons or as to the personal habits and financial responsibility of applicants for insurance, indemnity bonds, or commercial credit;

(4) an attorney at law in performing his duties as such attorney at law, a paralegal or legal assistant employed by an attorney at law, or a law student who is serving a legal internship;

(5) a collection agency or finance company licensed to do business under the laws of this state, or an employee thereof while acting within the scope of his employment, while making an investigation incidental to the business of the agency or company, including an investigation of the location of a debtor or his property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof;

(6) special agents employed by railroad companies, provided the railroad company notifies the board that such agents are operating in the state;

(7) insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them;

(8) an insurance adjuster, as defined by 37-60-101(10); or

(9) an internal investigator or auditor, while making an investigation incidental to the business of the agency or company by which he is singularly employed.

History: En. 66-3306 by Sec. 6, Ch. 234, L. 1974; R.C.M. 1947, 66-3306; amd. Sec. 5, Ch. 550, L. 1983; amd. Sec. 2, Ch. 647, L. 1985.

Compiler's Comments

1985 Amendment: At end of (1) substituted "and is guarding inside a structure which at the time is not open to the public" for "and has little contact with the public"; deleted former (4) that read: "a charitable, philanthropic society or association duly incorporated under the laws of this state which is organized and maintained for the public good and not for private profit"; in (4) after "performing his duties as such attorney at law", inserted remainder of subsection; and inserted (9).

1983 Amendment: Substituted (1) for former (1), which read: "a person employed exclusively and regularly by one employer in connection with the affairs of such employer only and where there exists an employer-employee relationship"; in (3), inserted final phrase beginning "or as to the personal habits..."; in (6) (now (5)) after "collection agency" inserted "or finance company licensed to do business under the laws of this state" and after "agency" inserted "or company"; and inserted (7) (now (6)) and (9) (now (8)).

Cross-References

Consumer reporting agencies, Title 31, ch. 3, part 1.

Insurance agents, solicitors, adjusters, consultants, and administrators, Title 33, ch. 17.

Part 2

Director of Department — Board

Part Cross-References

Duties and powers of Department heads, 2-15-112.

Board of private security patrolmen and investigators created, 2-15-1891.

Duties of director, 37-1-121.

37-60-201. Organization — meetings — records. The board shall meet annually and shall elect from among the seven members a president and a secretary. The board shall hold other meetings when necessary to transact its business. A majority of the board constitutes a quorum at any meeting. The department shall keep complete minutes and records of the meetings and rules and orders promulgated by the board. Copies of records and papers kept by the department, certified by the chairman and authenticated by the seal of the board, shall be received in evidence in courts with like effect as the original. Records of the board are open to public inspection under rules it prescribes.

History: En. 66-3302 by Sec. 2, Ch. 234, L. 1974; R.C.M. 1947, 66-3302; amd. Sec. 6, Ch. 550, L. 1983.

Compiler's Comments

1983 Amendment: Substituted present language for "The director shall administer and enforce the provisions of this chapter."

37-60-202. Rulemaking power. The board shall adopt and enforce reasonable rules:

(1) specifying the form of and procedure to be used in granting, denying, suspending, or revoking any license, registration, or identification card;

(2) fixing the qualifications of resident managers, qualifying agents, licensees, registrants, and holders of identification cards, in addition to those prescribed in this chapter, necessary to promote and protect the public welfare;

(3) establishing, in accordance with 37-1-134, application and examination fees for original or renewal licenses, registrations, and identification cards, and providing for refunding of any such fees;

(4) prohibiting the establishment of branch offices of any licensee, except a proprietary security organization, without approval by the board, establishing qualification requirements and license fees for those offices;

(5) for the certification of private investigator and private security guard raining programs, including the certification of firearms training programs and firearms instructors;

(6) for the approval of weapons;

(7) requiring the maintenance of records;

(8) requiring licensees to maintain such insurance coverage as the board onsiders necessary;

(9) defining "unprofessional conduct" for the purposes of removal from he board and suspension or revocation of licenses, registrations, and identifiation cards;

(10) establishing the expiration and renewal periods for licenses, registraions, and identification cards;

(11) for the temporary employment of persons without the required regisration or identification cards;

(12) providing for the issuance of probationary and temporary licenses for contract security companies and private investigators; and

(13) providing for the issuance of probationary registration and identification cards for private investigators who do not meet the requirements for age, employment experience, and written examination.

History: En. 66-3303 by Sec. 3, Ch. 234, L. 1974; R.C.M. 1947, 66-3303; amd. Sec. 7, Ch. 550, L. 1983; amd. Sec. 8, Ch. 647, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (12) and (13).

1983 Amendment: In lead-in changed "the director may" to "the board shall"; in (1) substituted present language for "classifying licensees according to the type of business regulated by this chapter in which they are engaged, including but not limited to private investigators and private patrol operators, and limiting the field and scope of the operations of a licensee to those in which he is classified and qualified to engage"; in (2) before "licensees" inserted "resident managers, qualifying agents" and after "licensees" inserted "registrants, and holders of identification cards"; in (3) substituted present language for "carrying out generally the provisions of this chapter"; and inserted (4) through (10).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-60-203 through 37-60-210 reserved.

37-60-211. Compensation of board members — expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 8, Ch. 550, L. 1983.

37-60-212. Attorney general to act as attorney for the board. The attorney general shall act as attorney for the board in actions and proceedings brought by or against it under this chapter. Fees and expenses of the attorney general acting in this capacity shall be paid out of board money in the state special revenue fund.

History: En. Sec. 9, Ch. 550, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

Compiler's Comments

1983 Amendment: Chapter 281 substituted "state special revenue fund" for "earmarked revenue fund".

Cross-References

Powers and duties of Attorney General, 2-15-501.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-60-301. License required. Except as provided in 37-60-105, it is unlawful for any person to act as a contract security company or proprietary security organization or private investigator within this state without having first obtained a license from the board. Those persons licensed on [the effective date of this act] shall retain their current licensure status and must renew their licenses on the renewal date as prescribed by the board.

History: En. 66-3304 by Sec. 4, Ch. 234, L. 1974; R.C.M. 1947, 66-3304; amd. Sec. 10, Ch. 550, L. 1983.

Compiler's Comments

1983 Amendment: Substituted present language for "No person shall engage in a business regulated by this chapter unless he is licensed under this chapter, and no person shall falsely represent that he is employed by a licensee."

37-60-302. Qualifying agent and resident manager required — substitution. (1) Any person not a resident of this state who applies for a license under this chapter shall, before application to the board, appoint for the duration of the license a qualifying agent and a resident manager. Every qualifying agent and resident manager shall satisfy the appropriate licensing requirements of this chapter.

(2) A resident manager must be appointed for each branch office located n this state, and the business of the applicant or licensee must be conducted under his direct supervision and control.

(3) If a qualifying agent or resident manager for any reason ceases to perform the duties of a qualifying agent or resident manager on a regular basis, he licensee shall promptly notify the board by certified mail of that fact and of the name of a substitute individual, who shall make application to the board for continuation of the license. Pending application by and board action upon the application of the substitute, the board may suspend the license or extend it for a reasonable time.

History: En. 66-3307 by Sec. 7, Ch. 234, L. 1974; R.C.M. 1947, 66-3307; amd. Sec. 11, Ch. 50, L. 1983; amd. Sec. 3, Ch. 647, L. 1985.

Compiler's Comments

1985 Amendment: In (1), at beginning of first entence substituted "Any person not a resident f this state who applies for a license under this hapter shall, before application" for "An applicant for a license under this chapter, other than n individual to operate as a contract security ompany or a private investigator, shall, upon or efore application", near end of first sentence, efore "a resident manager", inserted "a qualifyng agent and", after "a resident manager" eleted part of former (1)(a) and (1)(b) that ead: "for each branch office located within this ate, under whose direct supervision and control the business of the applicant shall be conucted; and

(b) a qualifying agent", in second sentence, after "shall satisfy" deleted "all of" and at end of sentence, after "this chapter", deleted "as though the applicant were an individual"; and inserted (2).

1983 Amendment: In (1), at beginning of subsection changed "An application" to "An applicant" and after "chapter" substituted language (amended 1985) for "shall be on a form prescribed by the director and accompanied by the application fee provided by this chapter"; and inserted (1)(a), (1)(b), (2) (now second sentence in (1)), and (3).

37-60-303. License qualifications. (1) An applicant for a license to ct as a contract security company or a proprietary security organization shall ubmit evidence under oath that he:

(a) is at least 18 years of age;

(b) is a citizen of the United States;

(c) has not been convicted in any jurisdiction of any felony or any crime nvolving moral turpitude or illegal use or possession of a dangerous weapon, or which a full pardon or similar relief has not been granted;

(d) has not been judicially declared incompetent by reason of any mental efect or disease or, if so declared, has been fully restored;

(e) is not suffering from habitual drunkenness or from narcotics addiction r dependence;

(f) is of good moral character; and

(g) has complied with such other experience qualifications as may be set y the rules of the board.

(2) Every applicant for a license to act as a private investigator shall ubmit evidence under oath that he:

(a) is a citizen of the United States;

(b) is at least 21 years of age;

(c) has at least a high school education or its equivalent;

(d) has not been convicted of a felony or a crime involving moral turpitude;

(e) has not been dishonorably discharged from any branch of the United States military service;

(f) is of good moral character; and

(g) for a period of not less than 3 years:

(i) has been lawfully engaged in the private investigative business;

(ii) has been lawfully employed as a private investigator or been the holder of a certificate of authority to conduct a private investigative business; or

(iii) has been an investigator, detective, special agent, or peace officer of a city, county, or state government or of the United States government.

(3) Up to one-half of the experience required by (2)(g) may be met by a combination of education and training as accepted by the board. All college credits must be from an accredited college or university and be verified by transcript.

(4) A corporation applying for a license under this section must be incorporated under the laws of this state or be duly qualified to do business within this state.

(5) The board shall require an applicant to demonstrate by written examination such additional qualifications as the board may by rule require.

History: En. 66-3308 by Sec. 8, Ch. 234, L. 1974; R.C.M. 1947, 66-3308; amd. Sec. 12, Ch. 550, L. 1983; amd. Sec. 4, Ch. 647, L. 1985.

Compiler's Comments

1985 Amendment: In (2)(b) substituted "21 years" for "25 years"; deleted former (2)(d) that read: "is a resident of this state"; deleted former (2)(h)(iv) that read: "has been graduated from an accredited university or college with a degree in police administration"; and inserted (3).

1983 Amendment: Substituted (1) through (4) (now (1), (2), (4), and (5)) for former (1) through (8), which read: "An application shall be verified and shall include:

(1) the full name and business address of the applicant;

(2) the name under which the applicant intends to do business;

(3) a statement as to the general nature of the business in which the applicant intends to engage;

(4) a statement as to the classification or classifications under which the applicant desires to be qualified;

(5) if the applicant is a person other than an individual, the full name and residence address of each of its partners, officers, and directors and its manager;

(6) two recent photographs of the applicant, of a type prescribed by the director, and two classifiable sets of his fingerprints;

(7) a verified statement of his experience qualifications; and

(8) such other information, evidence, statements, or documents as may be required by the director."

Cross-References

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-60-304. Licenses — application form and content. (1) Application for a license shall be made on a form prescribed by the board and accompanied by the application fee set by the board.

(2) An application shall be made under oath and shall include:

(a) the full name and address of the applicant;

(b) the name under which the applicant intends to do business;

(c) a statement as to the general nature of the business in which the applicant intends to engage;

(d) a statement as to whether the applicant desires to be licensed as a contract security company, a proprietary security organization, or a private investigator;

(e) two recent photographs of the applicant, of a type prescribed by the board, and two classifiable sets of his fingerprints;

(f) a statement of his experience qualifications;

(g) such other information, evidence, statements, or documents as may be prescribed by the rules of the board; and

(h) if the applicant is a person other than an individual, the full name and residence address of each of its partners, officers, and directors and its manager.

(3) The board shall verify the statements in the application and the applicant's moral character. The board shall send written notification to the chief of police, the sheriff, and the county attorney in whose jurisdiction the principal office of the applicant is to be located that an application has been submitted.

History: En. 66-3309 by Sec. 9, Ch. 234, L. 1974; R.C.M. 1947, 66-3309; amd. Sec. 22, Ch. 22, L. 1979; amd. Sec. 13, Ch. 550, L. 1983; amd. Sec. 5, Ch. 647, L. 1985.

Compiler's Comments

1985 Amendment: In (2)(h) after "and its manager", deleted "and, if the applicant is a corporation, a certified copy of its certificate of incorporation or certificate of authority issued by the secretary of state"; and in (3), at beginning of second sentence substituted "The board shall send written notification to" for "The board shall send a copy of the application to" and at end inserted "that an application has been submitted".

1983 Amendment: Substituted (1) through (3) for former (1) through (4), which read: "Before a license is granted, the applicant or his manager shall meet all of the following:

(1) be at least 18 years of age;

(2) be a citizen of the United States and a resident of the state of Montana;

(3) be of good moral character and temperate habits; and

(4) comply with such other qualifications concerning training, education, or experience as the director may fix by rule."

Cross-References

Oaths, Title 1, ch. 6.
Perjury, 45-7-201.
False swearing, 45-7-202.

37-60-305. Armed guards and investigators — registration requirements. (1) Except as provided in 37-60-105 and 37-60-308, no person may be employed as an armed private security guard or an armed private investigator in this state without having first been registered with the board and issued a registration card in the manner prescribed by this section.

(2) Applicants for registration shall file a sworn application on a form prescribed by the board, including the same information as required of applicants for licensure in 37-60-304(2)(a) and (2)(e) through (2)(g) and the type of employment by which the applicant intends to be employed. The application must be accompanied by the application fee prescribed by the board.

(3) Applicants for registration as armed private security guards shall meet the same qualifications required of applicants for licensure in 37-60-303(1)(a) through (g) and in addition to those requirements shall:

(a) complete the training requirements of a private security guard training program certified by the board and furnish the board, on a form prescribed by the board, written notice of satisfactory completion of such training; and

(b) fulfill such other requirements as the board may by rule prescribe.

(4) Applicants for registration as armed private investigators shall meet the same qualifications required of applicants for licensure in 37-60-303(2)(a) through (2)(g) and (5) and in addition to those requirements shall:

(a) complete the training requirements of a private investigator training program certified by the board and furnish the board, on a form prescribed by the board, written notice of satisfactory completion of such training; and

(b) fulfill such other requirements as the board may by rule prescribe.

History: **En. 66-3310 by Sec. 10, Ch. 234, L. 1974; R.C.M. 1947, 66-3310; amd. Sec. 14, Ch. 550, L. 1983; amd. Sec. 6, Ch. 647, L. 1985.**

Compiler's Comments

1985 Amendment: Near beginning of (1) substituted "no person may be employed as" for "no person may perform the duties of"; in (2), after "required of applicants for licensure in" substituted present language of remainder of subsection for "37-60-304(2)(a) through (g), accompanied by the application fee prescribed by the board"; and in (4) near end of introductory language substituted "37-60-303(2)(a) through (2)(g) and (5)" for "37-60-303(2)(a) through (h)".

1983 Amendment: Substituted (1) through (4) for "The director shall require an applicant or his manager to demonstrate his qualifications by a written examination."

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-60-306. Unarmed guards and investigators — identification cards required — qualifications. (1) Except as provided in 37-60-105 and 37-60-308, no person may be employed as an unarmed private security guard or an unarmed private investigator in this state without first making application to the board and being issued an identification card in the manner prescribed by this section.

(2) Applicants for identification cards shall file a sworn application on a form prescribed by the board, including the same information as required of licensees in 37-60-304(2)(a) through (g), accompanied by the application fee prescribed by the board.

(3) Applicants for identification cards shall meet such qualifications as may be prescribed by the board, and applicants for identification cards as unarmed investigators must demonstrate proficiency by successfully passing a written examination.

History: **En. 66-3311 by Sec. 11, Ch. 234, L. 1974; R.C.M. 1947, 66-3311; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 15, Ch. 550, L. 1983; amd. Sec. 7, Ch. 647, L. 1985.**

Compiler's Comments

1985 Amendment: Near beginning of (1) substituted "no person may be employed as" for "no person may perform the duties of"; and in (3) after "prescribed by the board", inserted remainder of subsection.

1983 Amendment: Substituted (1) through (3) for "If a license is denied, the applicant for such license or for renewal thereof may request a hearing within 30 days after notice of denial. Such hearing shall be held in accordance with the provisions of the Montana Administrative Procedure Act and the rules of the department of commerce."

1981 Amendment: Substituted "department of commerce" (now deleted) for "department of professional and occupational licensing".

37-60-307. Action on application. (1) The board shall grant the application for an original or renewal license, identification card, or registration unless it finds that the applicant, branch office manager, or qualifying agent has:

(a) not met the qualifications of 37-60-303;

(b) practiced fraud, deceit, or misrepresentation in the application process;

(c) knowingly made a material misstatement in the application for a license;

(d) violated any of the provisions of this chapter or the rules of the board; or

(e) taken any action warranting suspension or revocation under 37-60-321.

(2) If an original or renewal license, identification card, or registration is denied, the applicant may request a hearing within 30 days after receipt of notice of denial. The hearing shall be held in accordance with the provisions of the Montana Administrative Procedure Act and the rules of the department of commerce.

(3) Licenses, registration, or identification cards shall be granted by name for those categories of persons listed in 37-60-101(1), (2), (3), (4), (5), (8), (13), (14), (15), (18), (19), or (20), or any combination of the foregoing.

History: **En. 66-3312 by Sec. 12, Ch. 234, L. 1974; R.C.M. 1947, 66-3312; amd. Sec. 16, Ch. 550, L. 1983.**

Compiler's Comments

1983 Amendment: Substituted present (1) through (3) for former (1) and (2), which read: "(1) The business of each licensee shall be operated under the direction, control, charge, or management in this state of either the licensee or a manager, but no licensee shall be required to employ more than one manager.

(2) No person shall act as a manager of a licensee until he has complied with each of the following:

(a) demonstrated his qualifications by a written examination, if required by the director; and

(b) made a satisfactory showing to the director that he has the qualifications prescribed by 37-60-304."

37-60-308. Temporary employment without registration or identification card — authority of board. The board may, under such conditions as it shall prescribe by rule, authorize the employment by any licensee of any person for not more than 90 days who, because of his failure to register or obtain a registration or identification card in accordance with 37-60-305 or 37-60-306, could otherwise not act as a private security guard or private investigator.

History: **En. 66-3313 by Sec. 13, Ch. 234, L. 1974; R.C.M. 1947, 66-3313; amd. Sec. 17, Ch. 550, L. 1983.**

Compiler's Comments

1983 Amendment: Substituted present language for "Where the individual on the basis of whose qualifications a license under this chapter has been obtained ceases to be connected with the licensee for any reason whatever, the business may be carried on for such temporary period and under such terms and conditions as the director shall provide by regulation."

37-60-309. Form of license, registration, and identification card. (1) The license, registration, and identification card shall be in such form as may be determined by the board.

(2) A license shall include the name of the licensee, the name under which the licensee is to operate, and the number and date of the license.

(3) A registration or identification card shall include the name of the individual the card is issued to, a photograph of the individual, the name of the licensee employing the individual the card is issued to, a card number, and the date the card is issued.

History: **En. 66-3314 by Sec. 14, Ch. 234, L. 1974; R.C.M. 1947, 66-3314; amd. Sec. 18, Ch. 550, L. 1983.**

Compiler's Comments

1983 Amendment: In (1), after "license" deleted "when issued" and inserted "registration, and identification card", after "by the" hanged "director" to "board", and made minor hanges in phraseology; deleted former (1), which read: "the name of the licensee"; at beginning of (2) inserted the clause before "the name under" and after "operate" inserted remainder of subsection; in (3) substituted present language for "the number and date of the license".

37-60-310. Display of license, registration, and identification card. (1) A license shall at all times be posted in a conspicuous place in the principal place of business of the licensee.

(2) Any registrant or holder of an identification card must carry the card on his person while performing his duties and while going to and from work. Any peace officer of this state or any of its political subdivisions may request to see the card at any reasonable time, and the card must be shown.

History: En. 66-3315 by Sec. 15, Ch. 234, L. 1974; R.C.M. 1947, 66-3315; amd. Sec. 20, Ch. 550, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (2).

37-60-311. Repealed. Sec. 34, Ch. 550, L. 1983.

History: En. 66-3316 by Sec. 16, Ch. 234, L. 1974; R.C.M. 1947, 66-3316.

37-60-312. Annual renewal. (1) Licenses, registrations, and identification cards issued under this chapter expire at 12 midnight on the dates prescribed by the board if not, in each instance, renewed. To renew an unexpired license, the licensee shall, on or before the date on which it would otherwise expire, apply for renewal on a form prescribed by the board and pay the renewal fee prescribed by this chapter.

(2) The board may refuse to renew a license, registration, or identification card for any reason for which it could refuse to grant an original application or suspend or revoke any license, registration, or identification card under 37-60-321.

History: En. 66-3329 by Sec. 29, Ch. 234, L. 1974; R.C.M. 1947, 66-3329; amd. Sec. 21, Ch. 550, L. 1983.

Compiler's Comments

1983 Amendment: In first sentence of (1), after "licenses" inserted "registrations, and identification cards", after "chapter" deleted "and the pocket cards issued pursuant thereto shall", after "midnight on" changed "June 30 of each year" to "the dates prescribed by the board", and in second sentence after "prescribed by the" changed "director" to "board"; and inserted (2).

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

37-60-313. Repealed. Sec. 34, Ch. 550, L. 1983.

History: En. 66-3330 by Sec. 30, Ch. 234, L. 1974; amd. Sec. 1, Ch. 42, L. 1975; R.C.M. 1947, 66-3330.

37-60-314. Nontransferability of license — record changes. (1) No license issued under this chapter is transferable.

(2) A licensee shall notify the board within 5 days of any change in its officers or directors or other material change in the information previously furnished or required to be furnished to the board or any other material change or occurrence that could reasonably be expected to affect the licensee's right to a license. Upon such change or occurrence, the board may suspend or revoke the license or may allow the business to be carried on for a temporary period under terms and conditions as the board may require.

(3) This section may not be applied to restrict the sale of a business if the buyer qualifies for a license under the provisions of this chapter.

History: En. 66-3317 by Sec. 17, Ch. 234, L. 1974; R.C.M. 1947, 66-3317; amd. Sec. 22, Ch. 550, L. 1983.

Compiler's Comments

1983 Amendment: Substituted present language of (1) through (3) for "A licensee shall notify the department of any and all changes of his address, of the name under which he does business, and of any change in its officers or partners within 30 days after such change."

37-60-315 through 37-60-319 reserved.

37-60-320. Fees. (1) The fees prescribed by the board and collected by the department must be deposited into the state special revenue fund for the use of the board, subject to 37-1-101(6).

(2) The department shall keep an accurate account of funds received and vouchers issued by the department.

History: En. Sec. 19, Ch. 550, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted "state special revenue fund" for "earmarked revenue fund".

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-60-321. Suspension or revocation. The board may suspend or revoke a license, registration, or identification card issued under this chapter if it determines that the licensee or its manager or qualifying agent or any of its officers, directors, or partners or any registrant or holder of an identification card has:

(1) made any false statement or given any false information in connection with an application for a grant, renewal, or reinstatement of a license, registration, or identification card;

(2) violated any provisions of this chapter;

(3) violated any rule of the board adopted pursuant to the authority contained in this chapter;

(4) been convicted of a felony or any crime involving moral turpitude or illegally using, carrying, or possessing a dangerous weapon and as a result of such conviction is under state supervision;

(5) impersonated or permitted or aided and abetted an employee to impersonate a law enforcement officer or employee of the United States of America or of any state or political subdivision thereof;

(6) committed or permitted any employee to commit any act, while the license, registration, or identification card was expired, which would be cause for suspension, revocation, or denial of an application;

(7) willfully failed or refused to render to a client services or a report as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the parties;

(8) knowingly violated or advised, encouraged, or assisted the violation of any court order or injunction in the course of business as a licensee, registrant, or holder of an identification card;

(9) resorted to fraud, misrepresentation, or deception, in the course of business, which was not required to perform a client service; or

(10) been guilty of unprofessional conduct as defined by the rules of the board.

History: En. 66-3327 by Sec. 27, Ch. 234, L. 1974; R.C.M. 1947, 66-3327; amd. Sec. 23, Ch. 550, L. 1983.

Compiler's Comments

1983 Amendment: In lead-in, at beginning, changed "The director" to "The board", after "license" inserted "registration, or identification card", after "manager" substituted "or qualifying agent or" for "if an individual or if the licensee is a person other than an individual, that", after "partners" deleted "or its manager" and inserted "or any registrant or holder of an identification card"; in (1) after "application for" deleted "a license or", before "renewal" inserted "grant", and after "license" inserted "registration, or identification card"; in (3) changed "director" to "board"; in (6) after "license" inserted "registration, or identification card", after "revocation" deleted "of a license", before "denial" deleted "grounds for the", and after "application" deleted "for a license"; in (8) after "licensee" inserted "registrant, or holder of an identification card"; inserted (9) and (10).

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Duties of director in investigation of unethical conduct, 37-1-121.

Disciplinary authority of boards — injunctions, 37-1-136.

Weapons, Title 45, ch. 8, part 3.

37-60-322. Surrender of licenses, registration, and identification cards. (1) Whenever a license is suspended or revoked, the licensee shall within 24 hours after receiving notification of the suspension or revocation by the board surrender the license by mailing it or delivering it personally to the board.

(2) Whenever any person to whom a registration or identification card has been issued ceases employment for which the card was issued or has his card revoked or suspended by the board, he shall surrender the card to the licensee and within 5 days thereafter the licensee shall mail or personally deliver the card to the board.

History: En. Sec. 24, Ch. 550, L. 1983.

Part 4

Provisions Regulating Practice

37-60-401. Responsibility of licensee for conduct of employees. A licensee shall at all times be legally responsible for the good conduct in the business of each employee, including his manager.

History: En. 66-3318 by Sec. 18, Ch. 234, L. 1974; R.C.M. 1947, 66-3318.

Cross-References

Agency, Title 28, ch. 10.

Criminal trespass and burglary, Title 45, ch. 6, part 2.

Impersonating a public servant, 45-7-209.

37-60-402. Confidentiality of information — false reports — badges and uniforms — illegal entry. (1) A licensee or officer, director, partner, or manager of a licensee may divulge to any law enforcement officer or county attorney or his representative any information he may acquire as to any criminal offense, but he may not divulge to any other person, except as required by law, any information acquired by him except at the direction of the employer or client for whom the information was obtained.

(2) No licensee or officer, director, partner, manager, or employee of a licensee may knowingly make any false report to his employer or client for whom information was being obtained.

(3) No written report may be submitted to a client except by the licensee, qualifying manager, or a person authorized by either of them, and the person submitting the report shall exercise diligence in ascertaining whether or not the facts and information in the report are true and correct.

(4) No licensee or officer, director, partner, manager, or employee of a licensee may use a title, wear a uniform, use an identification card, or make any statement with the intent to give an impression that he is connected in

any way with the federal government, a state government, or any political subdivision of a state government.

(5) No licensee or officer, director, partner, manager, or employee of a licensee may enter any private building or portion thereof without the consent of the owner or of the person in legal possession thereof.

History: En. 66-3319 by Sec. 19, Ch. 234, L. 1974; amd. Sec. 29, Ch. 101, L. 1977; R.C.M. 1947, 66-3319; amd. Sec. 25, Ch. 550, L. 1983.

Compiler's Comments

1983 Amendment: Deleted former (4) and (5), which read: "(4) No licensee or officer, director, partner, manager, or employee of a private investigator may use a badge in connection with the official activities of the licensee's business.

(5) No private patrol licensee or officer, director, partner, manager, or employee of a private patrol licensee may use a badge except while engaged in guard or patrol work and while wearing a uniform."

Cross-References

Criminal trespass and burglary, Title 45, ch. 6, part 2.

Impersonating a public servant, 45-7-209.

37-60-403. Licensee advertising. Every advertisement by a licensee soliciting or advertising business shall contain his name and address as they appear in the records of the board.

History: En. 66-3321 by Sec. 21, Ch. 234, L. 1974; R.C.M. 1947, 66-3321; amd. Sec. 26, Ch. 550, L. 1983.

Compiler's Comments

1983 Amendment: At end of section, changed "department" to "board".

37-60-404. Duty to maintain employee records. Each employer shall maintain a record containing such information relative to his employees as may be prescribed by the board.

History: En. 66-3320 by Sec. 20, Ch. 234, L. 1974; R.C.M. 1947, 66-3320; amd. Sec. 27, Ch. 550, L. 1983.

Compiler's Comments

1983 Amendment: At beginning of section, changed "Each licensee" to "Each employer"; and at end of section changed "director" to "board".

37-60-405. Approval of weapons. The weapons to be carried by registrants must be approved by the board.

History: En. 66-3328 by Sec. 28, Ch. 234, L. 1974; R.C.M. 1947, 66-3328; amd. Sec. 28, Ch. 550, L. 1983.

Compiler's Comments

1983 Amendment: Substituted present language for "Any person who violates any of the provisions of this chapter is guilty of a misdemeanor punishable by fine not to exceed $500 or by imprisonment in the county jail not to exceed 6 months or by both such fine and imprisonment."

Cross-References

Weapons, Title 45, ch. 8, part 3.

37-60-406. Peace officer's casual employment. A peace officer, as defined in 46-1-201, or a reserve officer, as defined in 7-32-201, is not prohibited or restricted from accepting and engaging in employment as a security guard during his off-duty hours, provided that he does not advertise his services or solicit employment and further provided that the chief of his department previously approves the off-duty employment. A peace officer or reserve officer so engaged in casual employment is exempt from the provisions of this chapter.

History: En. Sec. 29, Ch. 550, L. 1983.

37-60-407. Regulation of uniforms, badges, and equipment. (1) No licensee or officer, director, partner, manager, or employee of a licensee may wear, carry, or display a badge in connection with the activities of the licensee's business. However, a person employed by a licensee who holds a commission as a peace officer, as defined in 46-1-201, is exempt from this provision.

(2) The board is authorized to establish rules regulating uniforms and any emblems, patches, insignias, and devices that may be either worn or displayed on uniforms, vehicles, or equipment.

History: En. Sec. 30, Ch. 550, L. 1983.

Cross-References

Impersonating a public servant, 45-7-209.

37-60-408. Restrictions on use of certain automatic dial-up systems. No person may install or use a security alarm system designed to automatically call a predetermined law enforcement telephone number without written permission from the chief law enforcement officer of the local government in which the alarm system is installed.

History: En. Sec. 1, Ch. 240, L. 1985.

37-60-409. Installation of new security alarm systems by electrician. An electrician who has received a license from the department pursuant to 37-68-301 may install new security alarm systems under the direction of a journeyman security alarm installer, but such work performed by an electrician is subject to inspection and approval by a security alarm installer licensed under 37-60-303.

History: En. Sec. 9, Ch. 647, L. 1985.

37-60-410 reserved.

37-60-411. Penalty. Any person who violates any of the provisions of this chapter is guilty of a misdemeanor punishable by a fine of not more than $1,000 or by imprisonment of not more than 1 year or by both such fine and imprisonment.

History: En. Sec. 31, Ch. 550, L. 1983.

CHAPTER 61

ATTORNEYS AT LAW

Part 1 — Licensing Authorities

Section

37-61-101. Supreme court may establish rules.
37-61-102. Attorneys' examining board — appointment, quorum, and powers.
37-61-103. Compensation and expenses of members of board.

Part 2 — Licensing

37-61-201. Who considered to be practicing law.
37-61-202. Who may be admitted as attorney.
37-61-203. Clerk, sheriff, or coroner may not practice law.
37-61-204. Qualifications, examination, and admission.

37-61-205. Application and examination fees.
37-61-206. Certificate of admission and license.
37-61-207. Oath.
37-61-208. Admission of attorneys from other states.
37-61-209. Roll of attorneys.
37-61-210. Penalty for practicing without license.
37-61-211. Annual license tax — municipal tax prohibited.
37-61-212. Collection of delinquent license tax.
37-61-213. Disposition of license tax.
37-61-214. Penalty for practicing without certificate indicating payment of tax.
37-61-215. Allowance of attorneys' fees to unlicensed persons forbidden.

Part 3 — Disbarment and Suspension

37-61-301. Disbarment.
37-61-302. Record of conviction.
37-61-303. Proceedings required on receipt of record of conviction.
37-61-304. Repealed.
37-61-305. Repealed.
37-61-306. Repealed.
37-61-307. Supreme court to make procedural rules — referees.
37-61-308. Witness fees and expenses.
37-61-309. Judgment.

Part 4 — Provisions Regulating Practice

37-61-401. Authority of attorney.
37-61-402. Production of proof of authority to court.
37-61-403. Change of attorney.
37-61-404. Notice of change.
37-61-405. Death or removal of attorney.
37-61-406. Penalty for deceit.
37-61-407. Penalty for delay.
37-61-408. Attorney prohibited from acquiring claim or demand for purpose of bringing action.
37-61-409. Penalty for violation.
37-61-410. Limitation.
37-61-411. Same rule when party prosecutes in person.
37-61-412. Partner of public prosecutor not to defend.
37-61-413. Former public prosecutors not to defend.
37-61-414. Partners not to appear on opposite sides.
37-61-415. Penalty for violation of two preceding sections.
37-61-416. Party may appear in person or by attorney.
37-61-417. Attorney may defend in person.
37-61-418. Attorney may see prisoner.
37-61-419. Attorney not to become surety on bond.
37-61-420. Judgment lien for compensation.
37-61-421. Attorney's or litigant's liability for excess costs.

Chapter Cross-References

Power of Supreme Court to make rules governing practice and admission to bar, Art. VII, sec. 2, Mont. Const.

Restrictions on practice of law by judges, Art. VII, sec. 9, Mont. Const.

Professional service corporations, Title 35, ch. 4.

Part 1

Licensing Authorities

Part Cross-References

Limited duty of attorney to report violations of Montana Elder Abuse Prevention Act, 3-5-511.

37-61-101. Supreme court may establish rules. The supreme court may establish rules for the admission of attorneys and counselors not inconsistent with this chapter.

History: En. Sec. 396, C. Civ. Proc. 1895; re-en. Sec. 6387, Rev. C. 1907; re-en. Sec. 8942, R.C.M. 1921; re-en. Sec. 8942, R.C.M. 1935; R.C.M. 1947, 93-2007.

Cross-References

Attorneys and counselors-at-law, Rule VI, Rules of the Supreme Court of Montana (see annotation at Art. VII, sec. 2, Mont. Const.).

37-61-102. Attorneys' examining board — appointment, quorum, and powers. (1) The supreme court is hereby authorized and empowered to appoint five members of the bar of this state, in good standing, as an examining board to conduct and assist in conducting the examination of applicants for admission to the bar. The court may release, dismiss, or remove any member of said board and appoint other members in his or their stead at any time.

(2) A majority of said board shall constitute a quorum and have the power to conduct examinations.

(3) The board shall perform such duties and render such assistance in the examinations of applicants as may be prescribed by the court and shall be governed and controlled by such rules as the court may prescribe. It shall be optional with the supreme court to appoint said board or to require the assistance of said board when appointed.

History: En. Sec. 5, Ch. 90, L. 1917; re-en. Sec. 8948, R.C.M. 1921; re-en. Sec. 8948, R.C.M. 1935; R.C.M. 1947, 93-2013.

Cross-References

Attorneys and counselors-at-law, Rule VI, Rules of the Supreme Court of Montana (see annotation at Art. VII, sec. 2, Mont. Const.).

37-61-103. Compensation and expenses of members of board. The members of said board shall be entitled to their travel expenses in attending meetings of said board and in conducting such examination and also when away from their homes or places of residence, as provided for in 2-18-501 through 2-18-503, and shall be paid such compensation for services performed by them as members of said board as may be fixed and determined by the supreme court.

History: En. Sec. 6, Ch. 90, L. 1917; re-en. Sec. 8949 R.C.M. 1921; re-en. Sec. 8949, R.C.M. 1935; amd. Sec. 82, Ch. 147, L. 1963; amd. Sec. 63, Ch. 439, L. 1975; R.C.M. 1947, 93-2014.

Part 2

Licensing

Part Cross-References

Attorneys and counselors-at-law, Rule VI, Rules of the Supreme Court of Montana (see annotation at Art. VII, sec. 2, Mont. Const.).

Licensing to follow contested case procedure, 2-4-631.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-61-201. Who considered to be practicing law. Any person who shall hold himself out or advertise as an attorney or counselor at law or who shall appear in any court of record or before a judicial body, referee, commissioner, or other officer appointed to determine any question of law or fact by a court or who shall engage in the business and duties and perform such acts, matters, and things as are usually done or performed by an attorney at law in the practice of his profession for the purposes of parts 1 through 3 of this chapter shall be deemed practicing law.

History: **En. Sec. 1, Ch. 90, L. 1917; re-en. Sec. 8944, R.C.M. 1921; re-en. Sec. 8944, R.C.M. 1935; R.C.M. 1947, 93-2009.**

37-61-202. Who may be admitted as attorney. Any citizen or person, resident of this state, who has bona fide declared his or her intention to become a citizen in the manner required by law, of good moral character, and who possesses the necessary qualifications of learning and ability is entitled to admission as attorney and counselor in all the courts of this state.

History: **En. Sec. 390, C. Civ. Proc. 1895; re-en. Sec. 6381, Rev. C. 1907; re-en. Sec. 8936, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 275; re-en. Sec. 8936, R.C.M. 1935; amd. Sec. 11, Ch. 168, L. 1971; R.C.M. 1947, 93-2001(part).**

Cross-References

Rules for determining residence, 1-1-215.

37-61-203. Clerk, sheriff, or coroner may not practice law. The clerk, deputy clerk, sheriff, undersheriff, deputy sheriff, or coroner must not, during his continuance in office, practice as attorney and counselor in any court.

History: **En. Sec. 429, C. Civ. Proc. 1895; re-en. Sec. 6421, Rev. C. 1907; re-en. Sec. 8992, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 171; re-en. Sec. 8992, R.C.M. 1935; R.C.M. 1947, 93-2119.**

Cross-References

Practice of law by Workers' Compensation Judge unlawful, 2-15-1014.

Certain officers not to practice law, 3-1-601.

Restrictions on practice of law by certain officers, 7-4-2210.

37-61-204. Qualifications, examination, and admission. Each applicant for admission as an attorney and counselor must produce satisfactory testimonials of good moral character and a certificate of one or more reputable counselors at law that he has been engaged in the study of law for 2 successive years prior to the making of such application and undergo a strict examination as to his qualifications by any one or more of the justices of the supreme court. The form and manner of the examination shall be as the justices may from time to time determine. However, a diploma from the university of Montana law school at Missoula or other evidence of having completed the 3-year course in law of that school entitles the holder to a license to practice law in all the courts of this state, subject to the right of the chief justice of the supreme court to order an examination as in ordinary cases of applicants without such diploma or evidence.

History: **En. Sec. 391, C. Civ. Proc. 1895; re-en. Sec. 6382, Rev. C. 1907; amd. Sec. 1, Ch. 18, L. 1915; re-en. Sec. 8937, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 276; re-en. Sec. 8937, R.C.M. 1935; amd. Sec. 35, Ch. 101, L. 1977; R.C.M. 1947, 93-2002.**

Cross-References

Attorneys and counselors-at-law, Rule VI, Rules of the Supreme Court of Montana (see annotation at Art. VII, sec. 2, Mont. Const.).

37-61-205. Application and examination fees. (1) Every applicant for admission to the bar must pay to the clerk of the supreme court at the time he files his application for admission a fee commensurate with the cost of processing the application as determined by the supreme court.

(2) In addition to the fee provided for in subsection (1), the supreme court may charge an examination fee commensurate with the cost of administering the bar examination.

(3) All money collected from fees herein provided for shall be deposited with the state treasurer by the clerk of the supreme court and placed in the general fund.

History: En. Sec. 7, Ch. 90, L. 1917; re-en. Sec. 8950, R.C.M. 1921; re-en. Sec. 8950, R.C.M. 1935; amd. Sec. 83, Ch. 147, L. 1963; R.C.M. 1947, 93-2015; amd. Sec. 1, Ch. 220, L. 1983.

Compiler's Comments

1983 Amendment: Near beginning of (1), following "bar" deleted ", by examination or otherwise,"; following "application for" deleted "examination or his petition for"; following "admission" substituted "a fee commensurate with the cost of processing the application as determined by the supreme court" for "the sum of $25. Should the applicant fail in the examination taken by him, he may take another examination before the board at any time within 1 year thereafter without further payment. No other fee shall be exacted for admission of any applicant if admitted within 1 year after the payment of the fee of $25 hereinabove designated"; and inserted (2).

Cross-References

Disposition of fees, 3-2-404.

Contribution of fees to judges' retirement fund, 19-5-404.

37-61-206. Certificate of admission and license. If upon examination he is found qualified, the supreme court must admit him as an attorney and counselor in all the courts of this state and must direct an order to be entered to that effect upon its records, and that a certificate of such record be given to him by the clerk of the court, which certificate is his license.

History: En. Sec. 392, C. Civ. Proc. 1895; re-en. Sec. 6383, Rev. C. 1907; re-en. Sec. 8938, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 277; re-en. Sec. 8938, R.C.M. 1935; R.C.M. 1947, 93-2003.

Cross-References

Clerk to charge fee for certificate of admission, 3-2-403.

37-61-207. Oath. Every person on his admission must take an oath to support the Constitution of the United States and The Constitution of the State of Montana and to faithfully discharge the duties of an attorney and counselor at law with fidelity to the best of his knowledge and ability. A certificate of such oath must be endorsed upon the license and a duplicate filed with the clerk.

History: En. Sec. 393, C. Civ. Proc. 1895; re-en. Sec. 6384, Rev. C. 1907; re-en. Sec. 8939, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 278; re-en. Sec. 8939, R.C.M. 1935; R.C.M. 1947, 93-2004.

Cross-References

Oath defined, 1-1-201.

Oaths, Title 1, ch. 6.

37-61-208. Admission of attorneys from other states. Every citizen of the United States or person resident of this state who has bona fide declared his or her intention to become a citizen in the manner required by law who has been admitted to practice law in the highest courts of another state or of a foreign country where the common law of England constitutes the basis of jurisprudence may be admitted to practice in the courts of this state upon the production of his or her license and satisfactory evidence of good moral character, but the court may examine the applicant as to his or her qualifications. However, any person who is a nonresident of the state of

Montana and who has been admitted and is at the time authorized to practice law in the highest courts of another state or of a foreign country may, upon motion of any attorney admitted to practice in the courts of this state, be permitted by the court to appear as attorney in any action or proceeding in such court and shall, when so permitted, be entitled to the same rights and privileges and be subject to the same duties and obligations with respect to such actions or proceedings as an attorney duly admitted to practice in the courts of this state.

History: **En. Sec. 394, C. Civ. Proc. 1895; re-en. Sec. 6385, Rev. C. 1907; amd. Sec. 1, Ch. 13, L. 1911; re-en. Sec. 8940, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 279; re-en. Sec. 8940, R.C.M. 1935; R.C.M. 1947, 93-2005.**

Cross-References

Applicability of common law, 1-1-108.

Common law of England — when rule of decision, 1-1-109.

Rules for determining residence, 1-1-215.

Citizenship, Title 1, ch. 1, part 4.

Civil action — form and commencement, Title 25, ch. 1, part 1.

37-61-209. Roll of attorneys. The clerk of the supreme court must keep a roll of the attorneys and counselors admitted to practice, which must be signed by the person admitted before he receives his license.

History: **En. Sec. 395, C. Civ. Proc. 1895; re-en. Sec. 6386, Rev. C. 1907; re-en. Sec. 8941, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 280; re-en. Sec. 8941, R.C.M. 1935; R.C.M. 1947, 93-2006.**

Cross-References

Duty of Clerk of Supreme Court to keep a roll of attorneys, 3-2-402.

37-61-210. Penalty for practicing without license. If any person practices law in any court, except a justice's court or a city court, without having received a license as attorney and counselor, he is guilty of a contempt of court.

History: **En. Sec. 397, C. Civ. Proc. 1895; re-en. Sec. 6388, Rev. C. 1907; re-en. Sec. 8943, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 281; re-en. Sec. 8943, R.C.M. 1935; R.C.M. 1947, 93-2008.**

Cross-References

Contempts, Title 3, ch. 1, part 5.

Justices' Courts, Title 3, ch. 10.

City Courts, Title 3, ch. 11.

Procedure in Justices' Courts, Title 25, ch. 31.

Procedure in City Courts, Title 25, ch. 32.

Payment of attorneys' fees to unlicensed persons forbidden, 37-61-215.

37-61-211. Annual license tax — municipal tax prohibited. (1) Every attorney or counselor at law admitted by the supreme court of the state to practice his profession within the state shall be required to pay a license tax of $10 per annum, which tax shall be payable to and collected by the clerk of the supreme court on or before April 1 of each year.

(2) Upon the payment of such tax, the clerk shall issue and deliver a certificate to the person paying the same, certifying to the payment of said license tax and stating the period covered by said payment.

(3) No license tax shall be imposed upon attorneys by a municipality or any other subdivision of the state.

History: **En. Sec. 2, Ch. 90, L. 1917; re-en. Sec. 8945, R.C.M. 1921; re-en. Sec. 8945, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1961; R.C.M. 1947, 93-2010.**

Cross-References

Disposition of fees, 3-2-404.

Contribution of fees to Judges' Retirement Fund, 19-5-404.

37-61-212. Collection of delinquent license tax. If any practicing attorney or counselor at law shall fail, neglect, or refuse to pay to the clerk of the supreme court the license tax imposed by this chapter for a period of 30 days after the same is due and payable, it shall be the duty of the clerk of the supreme court to take such action for the collection of the same as is required of the county treasurer in cases of nonpayment of other licenses, as provided by 7-21-2116, and the provisions of 7-21-2115 through 7-21-2117 shall control in said proceedings so far as the same are applicable thereto.

History: **En. Sec. 16, Ch. 90, L. 1917; re-en. Sec. 8959, R.C.M. 1921; re-en. Sec. 8959, R.C.M. 1935; R.C.M. 1947, 93-2024.**

37-61-213. Disposition of license tax. All moneys so collected during any month shall, on or before the first day of the succeeding month, be delivered to and deposited with the state treasurer by the clerk of the supreme court, and the state treasurer shall deposit such moneys in the general fund.

History: **En. Sec. 3, Ch. 90, L. 1917; re-en. Sec. 8946, R.C.M. 1921; re-en. Sec. 8946, R.C.M. 1935; amd. Sec. 81, Ch. 147, L. 1963; R.C.M. 1947, 93-2011.**

Cross-References

Disposition of fees, 3-2-404.

Contributions of fees to Judges' Retirement Fund, 19-5-404.

37-61-214. Penalty for practicing without certificate indicating payment of tax. No attorney shall practice or be permitted to practice his profession in any of the courts of record in this state until he shall have paid such license tax for the current fiscal year and procured a certificate, as hereinabove provided, and any attorney violating this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $25.

History: **En. Sec. 4, Ch. 90, L. 1917; re-en. Sec. 8947, R.C.M. 1921; re-en. Sec. 8947, R.C.M. 1935; R.C.M. 1947, 93-2012.**

37-61-215. Allowance of attorneys' fees to unlicensed persons forbidden. It shall be unlawful for any court within this state to allow attorneys' fees in any action or proceeding before said court in which attorneys' fees are allowed by law to either party to such action or proceeding when such party is represented by anyone other than a duly admitted or licensed attorney at law.

History: **En. Sec. 15, Ch. 90, L. 1917; re-en. Sec. 8958, R.C.M. 1921; re-en. Sec. 8958, R.C.M. 1935; R.C.M. 1947, 93-2023.**

Part 3

Disbarment and Suspension

Part Cross-References

Orders of the Supreme Court relating to the Commission on Practice, see annotation at Art. VII, sec. 2, Mont. Const.

Rules of the Commission on Practice, see annotation at Art. VII, sec. 2, Mont. Const.

Guidelines for local grievance committee procedure, see annotation at Art. VII, sec. 2, Mont. Const.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

37-61-301. Disbarment. (1) The supreme court of the state shall have exclusive jurisdiction to remove or suspend attorneys and counselors at law.

(2) An attorney and counselor may be removed or suspended for any of the following causes arising after his admission to practice:

(a) his conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction is conclusive evidence;

(b) willful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession which he ought in good faith to do or forbear and any violation of the oath taken by him or of his duties as such attorney and counselor;

(c) corruptly or willfully and without authority appearing as attorney for a party to an action or proceeding;

(d) lending his name to be used as attorney and counselor by another person who is not an attorney and counselor;

(e) being guilty of deceit, malpractice, crime, or misdemeanor involving moral turpitude.

History: En. Sec. 402, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 36, L. 1903; re-en. Sec. 6393, Rev. C. 1907; re-en. Sec. 8961, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 287; re-en. Sec. 8961, R.C.M. 1935; R.C.M. 1947, 93-2026(part).

37-61-302. Record of conviction. In case of the conviction of an attorney and counselor of a felony or misdemeanor involving moral turpitude, the clerk of the court in which such conviction is had shall, within 30 days thereafter, transmit to the supreme court a certified copy of the record of conviction.

History: En. Sec. 417, C. Civ. Proc. 1895; re-en. Sec. 6409, Rev. C. 1907; re-en. Sec. 8962, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 288; re-en. Sec. 8962, R.C.M. 1935; R.C.M. 1947, 93-2027.

37-61-303. Proceedings required on receipt of record of conviction. The proceedings to remove or suspend an attorney and counselor under 37-61-301(2)(a) must be taken by the court on the receipt of a certified copy of the record of conviction. The proceedings under the subsections (2)(b), (2)(c), or (2)(d) of 37-61-301 may be taken by the court for the matters within its knowledge or may be taken upon the information of another.

History: En. Sec. 418, C. Civ. Proc. 1895; re-en. Sec. 6410, Rev. C. 1907; re-en. Sec. 8963, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 289; re-en. Sec. 8963, R.C.M. 1935; R.C.M. 1947, 93-2028.

37-61-304. Repealed. Sec. 1, Ch. 388, L. 1983.

History: En. Sec. 8, Ch. 90, L. 1917; re-en. Sec. 8951, R.C.M. 1921; re-en. Sec. 8951, R.C.M. 1935; R.C.M. 1947, 93-2016.

37-61-305. Repealed. Sec. 1, Ch. 388, L. 1983.

History: En. Sec. 9, Ch. 90, L. 1917; re-en. Sec. 8952, R.C.M. 1921; re-en. Sec. 8952, R.C.M. 1935; R.C.M. 1947, 93-2017.

37-61-306. Repealed. Sec. 1, Ch. 388, L. 1983.

History: En. Sec. 10, Ch. 90, L. 1917; re-en. Sec. 8953, R.C.M. 1921; re-en. Sec. 8953, R.C.M. 1935; R.C.M. 1947, 93-2018.

37-61-307. Supreme court to make procedural rules — referees. 1) The supreme court may make rules regulating pleadings, practice, and procedure in such action or proceeding; and in the absence of such rules, the aw relating to pleadings, practice, and procedure in civil actions, so far as applicable, shall control.

(2) The court may order a reference as authorized by Rule 53, M.R.Civ.P.; and in the event of a reference, the referee or referees shall have the powers

provided in such rule and shall receive such compensation as shall be fixed and allowed by the supreme court.

History: En. Sec. 11, Ch. 90, L. 1917; re-en. Sec. 8954, R.C.M. 1921; re-en. Sec. 8954, R.C.M. 1935; R.C.M. 1947, 93-2019.

Cross-References

Orders of the Supreme Court relating to the Commission on Practice, see annotation at Art. VII, sec. 2, Mont. Const.

Rules of the Commission on Practice, see annotation at Art. VII, sec. 2, Mont. Const.

Guidelines for local grievance committee procedure, see annotation at Art. VII, sec. 2, Mont. Const.

Pleadings, motions, and other papers, Title 25, ch. 4.

Trials, Title 25, ch. 7.

Montana Rules of Civil Procedure, Title 25, ch. 20.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

37-61-308. Witness fees and expenses. Witnesses on behalf of the complainant in any such action or proceeding shall be entitled to the fees and mileage provided by law for witnesses in civil actions in the district court.

History: En. Sec. 12, Ch. 90, L. 1917; re-en. Sec. 8955, R.C.M. 1921; re-en. Sec. 8955, R.C.M. 1935; amd. Sec. 84, Ch. 147, L. 1963; R.C.M. 1947, 93-2020.

Cross-References

Mileage allowance, 2-18-503.

Witness fees, Title 26, ch. 2, part 5.

37-61-309. Judgment. Upon conviction, in cases arising under 37-61-301(2)(a), the judgment of the court must be that the name of the party be stricken from the roll of attorneys and counselors of the court and that he be precluded from practicing as such attorney or counselor in all the courts of this state. Upon conviction in cases under the other subsections of that section, the judgment of the court may be, according to the gravity of the offense charged, deprivation of the right to practice as attorney or counselor in the courts of this state permanently or for a limited period.

History: En. Sec. 428, C. Civ. Proc. 1895; re-en. Sec. 6420, Rev. C. 1907; re-en. Sec. 8973, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 299; re-en. Sec. 8973, R.C.M. 1935; R.C.M. 1947, 93-2038.

Cross-References

Duty of Clerk of Supreme Court to keep roll of attorneys, 3-2-402, 37-61-209.

Part 4

Provisions Regulating Practice

37-61-401. Authority of attorney. (1) An attorney and counselor has authority to:

(a) bind his client in any steps of an action or proceeding by his agreement filed with the clerk or entered upon the minutes of the court and not otherwise;

(b) receive money claimed by his client in an action or proceeding during the pendency thereof or after judgment unless a revocation of his authority is filed and, upon the payment thereof and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment.

(2) The death of a party to an action or proceeding does not revoke the authority of his attorney of record in said action or proceeding, but the authority of the attorney is continued in all respects the same and with like

effect as it was prior to the death of such party until such attorney shall withdraw his appearance in said action or proceeding or some other attorney shall be substituted for him or his authority shall be otherwise terminated and entry thereof made to appear in the record of such action or proceeding.

History: En. Sec. 398, C. Civ. Proc. 1895; re-en. Sec. 6389, Rev. C. 1907; amd. Sec. 1, Ch. 35, L. 1915; re-en. Sec. 8974, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 283; re-en. Sec. 8974, R.C.M. 1935; R.C.M. 1947, 93-2101.

37-61-402. Production of proof of authority to court. The court or judge, on motion of either party, may require the attorney of the adverse party to produce and prove the authority under which he appears and may stay all proceedings until such is shown and may at any time summarily relieve a party from the consequences of the acts of an unauthorized attorney.

History: En. Sec. 431, C. Civ. Proc. 1895; re-en. Sec. 6423, Rev. C. 1907; re-en. Sec. 8994, R.C.M. 1921; re-en. Sec. 8994, R.C.M. 1935; R.C.M. 1947, 93-2121.

37-61-403. Change of attorney. The attorney in an action or special proceeding may be changed at any time before or after judgment or final determination, as follows:

(1) upon consent of both client and attorney, filed with the clerk or entered upon the minutes;

(2) upon the order of the court, upon the application of either client or attorney, after notice from one to the other.

History: En. Sec. 399, C. Civ. Proc. 1895; re-en. Sec. 6390, Rev. C. 1907; re-en. Sec. 8975, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 284; re-en. Sec. 8975, R.C.M. 1935; R.C.M. 1947, 93-2102.

37-61-404. Notice of change. When an attorney is changed as provided in 37-61-403, written notice of the change and the substitution of a new attorney or of the appearance of the party in person must be given to the adverse party. Until then he must recognize the former attorney.

History: En. Sec. 400, C. Civ. Proc. 1895; re-en. Sec. 6391, Rev. C. 1907; re-en. Sec. 8976, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 285; re-en. Sec. 8976, R.C.M. 1935; R.C.M. 1947, 93-2103.

37-61-405. Death or removal of attorney. When an attorney dies or is removed or suspended or ceases to act as such, a party to an action for whom he was acting as attorney must, before any further proceedings are had against him, be required by the adverse party, by written notice, to appoint another attorney or appear in person.

History: En. Sec. 401, C. Civ. Proc. 1895; re-en. Sec. 6392, Rev. C. 1907; re-en. Sec. 8977, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 286; re-en. Sec. 8977, R.C.M. 1935; R.C.M. 1947, 93-2104.

Cross-References

Service of notice of appeal upon death of attorney, Rule 4, M.R.App.Civ.P. (see Title 25, ch. 21).

37-61-406. Penalty for deceit. An attorney or counselor who is guilty of any deceit or collusion or consents to any deceit or collusion with intent to deceive the court or a party forfeits to the party injured by his deceit or collusion treble damages. He is also guilty of a misdemeanor.

History: En. Sec. 403, C. Civ. Proc. 1895; re-en. Sec. 6395, Rev. C. 1907; re-en. Sec. 8978, R.C.M. 1921; Cal. Pen. C. Sec. 160; re-en. Sec. 8978, R.C.M. 1935; R.C.M. 1947, 93-2105.

Cross-References

Misdemeanor penalty when none specified, 46-18-212.

37-61-407. Penalty for delay. An attorney and counselor who willfully delays his client's cause with a view to his own gain or willfully receives money or an allowance for or on account of money which he has not laid out or become answerable for forfeits to the party injured treble damages.

History: En. Sec. 404, C. Civ. Proc. 1895; re-en. Sec. 6396, Rev. C. 1907; re-en. Sec. 8979, R.C.M. 1921; Cal. Pen. C. Sec. 160; re-en. Sec. 8979, R.C.M. 1935; R.C.M. 1947, 93-2106.

Cross-References

Willfully defined, 1-1-204.

Damages for appeal without merit, Rule 32, M.R.App.Civ.P. (see Title 25, ch. 21).

37-61-408. Attorney prohibited from acquiring claim or demand for purpose of bringing action. (1) An attorney and counselor must not directly or indirectly buy or be in any manner interested in buying a bond, promissory note, bill of exchange, book debt, or other thing in action with the intent and for the purpose of bringing an action thereon.

(2) An attorney and counselor must not, by himself or by or in the name of another person, either before or after action brought, promise or give or procure to be promised or given a valuable consideration to any person as an inducement to placing or in consideration of having placed in his hands or in the hands of another person a demand of any kind for the purpose of bringing an action thereon. This subsection does not apply to an agreement between attorneys and counselors, or either, to divide between themselves the compensation to be received.

History: (1)En. Sec. 405, C. Civ. Proc. 1895; re-en. Sec. 6397, Rev. C. 1907; re-en. Sec. 8980, R.C.M. 1921; Cal. Pen. C. Sec. 161; re-en. Sec. 8980, R.C.M. 1935; Sec. 93-2107, R.C.M. 1947; (2)En. Sec. 406, C. Civ. Proc. 1895; re-en. Sec. 6398, Rev. C. 1907; re-en. Sec. 8981, R.C.M. 1921; re-en. Sec. 8981, R.C.M. 1935; Sec. 93-2108, R.C.M. 1947; R.C.M. 1947, 93-2107, 93-2108(part).

37-61-409. Penalty for violation. An attorney and counselor who violates 37-61-408 is guilty of a misdemeanor and on conviction thereof shall be punished accordingly and must be removed from office by the supreme court.

History: En. Sec. 406, C. Civ. Proc. 1895; re-en. Sec. 6398, Rev. C. 1907; re-en. Sec. 8981, R.C.M. 1921; re-en. Sec. 8981, R.C.M. 1935; R.C.M. 1947, 93-2108(part); amd. Sec. 23, Ch. 22, L. 1979.

Cross-References

Misdemeanor penalty when none specified, 46-18-212.

37-61-410. Limitation. Sections 37-61-407 through 37-61-409 do not prohibit the receipt by an attorney or counselor of a bond, promissory note, bill of exchange, book debt, or other thing in action in payment for property sold or for services actually rendered or for a debt antecedently contracted or from buying or receiving a bill of exchange, draft, or other thing in action for the purpose of remittance and without intent to violate any of those sections.

History: En. Sec. 407, C. Civ. Proc. 1895; re-en. Sec. 6399, Rev. C. 1907; re-en. Sec. 8982, R.C.M. 1921; re-en. Sec. 8982, R.C.M. 1935; R.C.M. 1947, 93-2109.

37-61-411. Same rule when party prosecutes in person. Sections 37-61-407 through 37-61-410 apply to a person prosecuting an action in person who does an act which an attorney and counselor is therein forbidden to do.

History: En. Sec. 408, C. Civ. Proc. 1895; re-en. Sec. 6400, Rev. C. 1907; re-en. Sec. 8983, R.C.M. 1921; re-en. Sec. 8983, R.C.M. 1935; R.C.M. 1947, 93-2110.

37-61-412. Partner of public prosecutor not to defend. An attorney and counselor must not directly or indirectly advise concerning, aid, or take any part in the defense of an action or special proceeding, civil or criminal, brought, carried on, aided, advocated, or prosecuted, as attorney general, county attorney, or other public prosecutor, by a person with whom he is interested or connected, either directly or indirectly, as a law partner; or take or receive, directly or indirectly, from a defendant therein or other person a fee, gratuity, or reward for or upon any cause, consideration, pretense, understanding, or agreement whatever, express or implied, having relation thereto or to the prosecution or defense thereof.

History: En. Sec. 409, C. Civ. Proc. 1895; re-en. Sec. 6401, Rev. C. 1907; re-en. Sec. 8984, R.C.M. 1921; Cal. Pen. C. Sec. 162; re-en. Sec. 8984, R.C.M. 1935; R.C.M. 1947, 93-2111.

Cross-References

Standards of conduct, Title 2, ch. 2.

Limitations on activities of County Attorneys and Deputy County Attorneys, 7-4-2704.

37-61-413. Former public prosecutors not to defend. An attorney and counselor who has brought, carried on, aided, advocated, or prosecuted or has been in anywise connected with an action or special proceeding, civil or criminal, as attorney general, county attorney, or other public prosecutor, must not, at any time thereafter, directly or indirectly advise concerning, aid, or take any part in the defense thereof; or take or receive, either directly or indirectly, from a defendant therein or other person a fee, gratuity, or reward for or upon any cause, consideration, pretense, understanding, or agreement, either express or implied, having relation thereto or to the prosecution or defense thereof.

History: En. Sec. 410, C. Civ. Proc. 1895; re-en. Sec. 6402, Rev. C. 1907; re-en. Sec. 8985, R.C.M. 1921; Cal. Pen. C. Sec. 162; re-en. Sec. 8985, R.C.M. 1935; R.C.M. 1947, 93-2112.

Cross-References

Standards of conduct, Title 2, ch. 2.

Limitations on activities of County Attorneys and Deputy County Attorneys, 7-4-2704.

37-61-414. Partners not to appear on opposite sides. Whenever a law partnership or any member thereof accepts employment to prosecute or defend any action, civil or criminal, or to advise in relation thereto, no member of said partnership is permitted, then or afterward, to act as attorney or counselor on the side opposite to that upon which such original employment was had. This section does not prevent a person who has been employed as attorney and counselor in an action or proceeding before becoming a member of a partnership from appearing and acting therein until its completion.

History: En. Sec. 411, C. Civ. Proc. 1896; Re-en. Sec. 6403, Rev. C. 1907; re-en. Sec. 8986, R.C.M. 1921; re-en. Sec. 8986, R.C.M. 1935; R.C.M. 1947, 93-2113.

37-61-415. Penalty for violation of two preceding sections. An attorney and counselor who violates either 37-61-413 or 37-61-414 is guilty of a misdemeanor and on conviction thereof shall be punished accordingly and must be removed from office by the supreme court.

History: En. Sec. 412, C. Civ. Proc. 1895; re-en. Sec. 6404, Rev. C. 1907; re-en. Sec. 8987, R.C.M. 1921; re-en. Sec. 8987, R.C.M. 1935; R.C.M. 1947, 93-2114.

Cross-References

Misdemeanor penalty when none specified, 46-18-212.

37-61-416. Party may appear in person or by attorney. A party to a civil action who is of full age may prosecute or defend the same in person or by attorney at his election unless he has been judicially declared to be incompetent to manage his affairs. Each provision of this part relating to the conduct of an action wherein the attorney for the party is mentioned includes a party prosecuting or defending in person unless otherwise specially prescribed therein or unless that construction is manifestly repugnant to the context. If a party has an attorney in the action, he cannot appear or act in person where an attorney may appear or act either by special provisions of law or by the course and practice of the court.

History: En. Sec. 413, C. Civ. Proc. 1895; re-en. Sec. 6405, Rev. C. 1907; re-en. Sec. 8988, R.C.M. 1921; re-en. Sec. 8988, R.C.M. 1935; R.C.M. 1947, 93-2115.

37-61-417. Attorney may defend in person. This part does not prohibit an attorney or counselor from defending himself in person if prosecuted either civilly or criminally.

History: En. Sec. 414, C. Civ. Proc. 1895; re-en. Sec. 6406, Rev. C. 1907; re-en. Sec. 8989, R.C.M. 1921; Cal. Pen. C. Sec. 163; re-en. Sec. 8989, R.C.M. 1935; R.C.M. 1947, 93-2116.

37-61-418. Attorney may see prisoner. All public officers, sheriffs, coroners, jailers, constables, or other officers or persons having in custody any person committed, imprisoned, or restrained of his liberty for any alleged cause whatever must admit any practicing attorney and counselor at law in this state whom such person restrained of his liberty may desire to see or consult, to see and consult such person so imprisoned, alone and in private, at the jail or other place of custody. Any officer violating this provision shall forfeit and pay $100 to the person aggrieved, to be recovered by action of debt in any court of competent jurisdiction.

History: En. Sec. 13, p. 373, Bannack Stat.; re-en. Sec. 13, p. 378, Cod. Stat. 1871; re-en. Sec. 52, 5th Div. Rev. Stat. 1879; re-en. Sec. 114, 5th Div. Comp. Stat. 1887; re-en. Sec. 415, C. Civ. Proc. 1895; re-en. Sec. 6407, Rev. C. 1907; re-en. Sec. 8990, R.C.M. 1921; re-en. Sec. 8990, R.C.M. 1935; R.C.M. 1947, 93-2117.

37-61-419. Attorney not to become surety on bond. (1) Without the consent of the district court judge who had first approved the security, no attorney and counselor at law shall become security in any bond or recognizance of any sheriff, constable, or coroner or upon any bond, undertaking, or recognizance authorized by any statute, to be taken for the payment of any sum of money into court in default of the principal.

(2) No attorney at law may act as surety for bail or furnish bail.

History: En. Sec. 14, p. 373, Bannack Stat.; re-en. Sec. 14, p. 378, Cod. Stat. 1871; re-en. Sec. 53, 5th Div. Rev. Stat. 1879; re-en. Sec. 115, 5th Div. Comp. Stat. 1887; re-en. Sec. 416, C. Civ. Proc. 1895; re-en. Sec. 6408, Rev. C. 1907; re-en. Sec. 8991, R.C.M. 1921; re-en. Sec. 8991, R.C.M. 1935; R.C.M. 1947, 93-2118; amd. Sec. 164, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "or in any bond or recognizance for the appearance of any person or persons charged with any public offense" after "coroner" in (1); rearranged phraseology; added subsection (2).

Cross-References

Bail, Title 46, ch. 9.

37-61-420. Judgment lien for compensation. (1) The compensation of an attorney and counselor for his services is governed by agreement, express or implied, which is not restrained by law.

(2) From the commencement of an action or the service of an answer containing a counterclaim, the attorney who appears for a party has a lien upon his client's cause of action or counterclaim which attaches to a verdict, report, decision, or judgment in his client's favor and the proceeds thereof in whose hands they may come. Such lien cannot be affected by any settlement between the parties before or after judgment.

History: En. Sec. 430, C. Civ. Proc. 1895; re-en. Sec. 6422, Rev. C. 1907; re-en. Sec. 8993, R.C.M. 1921; re-en. Sec. 8993, R.C.M. 1935; R.C.M. 1947, 93-2120.

Cross-References

Judgment, Title 25, ch. 9.
Attorneys' fees, Title 25, ch. 10, part 3.
Execution of judgment, Title 25, ch. 13.
Liens of physicians, nurses, and hospitals, 71-3-1114.

37-61-421. Attorney's or litigant's liability for excess costs. An attorney or party to any court proceeding who, in the determination of the court, multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorney fees reasonably incurred because of such conduct.

History: En. Sec. 1, Ch. 533, L. 1985.

CHAPTER 62

POLYGRAPH EXAMINERS

Part 1 — General

Section

37-62-101. Definitions.
37-62-102. Powers and duties of department.

Part 2 — Licensing

37-62-201. License required.
37-62-202. Issuance of examiner's license with examination.
37-62-203. Issuance of examiner's license — reciprocity.
37-62-204. Terms of license — renewal.
37-62-205. Form of license — display of license.
37-62-206. Pocket card.
37-62-207. Continuing education.
37-62-208. Fees.
37-62-209. Internship license.
37-62-210 and 37-62-211 reserved.
37-62-212. Suspension and revocation.
37-62-213. Hearing.

Part 3 — Miscellaneous Provisions

37-62-301. Minimum standards for instruments or devices.
37-62-302. Inadmissibility of results as evidence.
37-62-303. Pre-test procedure — termination of examination.
37-62-304 through 37-62-310 reserved.
37-62-311. Penalty.

Part 1

General

37-62-101. Definitions. In this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(2) "Examinee" means an individual who is being examined, tested, or questioned by an examiner for the purpose of detecting deception or verifying truthfulness.

(3) "Examiner" means any person who:

(a) purports to be able to detect deception, verify truthfulness, or provide a diagnostic opinion of deception or truthfulness through the use of a mechanical device or instrument;

(b) represents that he can or does offer the service of detecting deception, verifying truthfulness, or providing a diagnostic opinion of deception or truthfulness through the use of a mechanical device or instrument; or

(c) uses a mechanical device or instrument to measure or record an individual's bodily responses or psychophysiological activities to enable or assist the detection of deception, the verification of truthfulness, or the reporting of a diagnostic opinion regarding deception or truthfulness.

(4) "Internship" means the study of polygraphs and the administration of polygraph examinations by a trainee under the personal supervision and control of a licensed polygraph examiner.

History: En. Sec. 1, Ch. 185, L. 1983; amd. Sec. 1, Ch. 547, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (4).

37-62-102. Powers and duties of department. The department shall:

(1) administer and enforce the provisions of this chapter;

(2) adopt rules in accordance with the Montana Administrative Procedure Act to carry out the provisions of this chapter; and

(3) investigate all complaints concerning violations of this chapter unless the department determines that any such complaint is frivolous or otherwise lacking in merit.

History: En. Sec. 3, Ch. 185, L. 1983.

Part 2

Licensing

37-62-201. License required. No person may, unless licensed under the provisions of this chapter:

(1) hold himself out to be an examiner;

(2) use or attempt to use any mechanical device or instrument for the purpose of detecting deception, verifying truthfulness, or reporting a diagnostic opinion regarding deception or truthfulness;

(3) purport to detect deception or verify truthfulness through mechanical devices or instruments; or

(4) advertise or represent that he can or does offer the service of detecting deception, verifying truthfulness, or reporting a diagnostic opinion regarding an individual's deception or truthfulness through mechanical devices or instruments.

History: **En. Sec. 4, Ch. 185, L. 1983.**

37-62-202. Issuance of examiner's license with examination. Upon application and payment of the required fee, an applicant must be granted a license as an examiner if he:

(1) is at least 18 years old;

(2) is a citizen of the United States;

(3) is of good moral character;

(4) has successfully completed a course in polygraph instruction at an American polygraph association accredited institution;

(5) has a high school diploma from an accredited high school or its equivalent; and

(6) has successfully passed an examination conducted by the department that tests the applicant's general knowledge of the use of the polygraph or a comparable examination conducted by another state whose law requires successful completion of the examination as qualification for a license.

History: **En. Sec. 6, Ch. 185, L. 1983.**

37-62-203. Issuance of examiner's license — reciprocity. (1) Upon application to the department and payment of the required license fee, a person must be issued an examiner's license if he has satisfied the department by affidavit or otherwise that he meets the minimum requirements for licensing provided in 37-62-202.

(2) Except as provided in subsection (3), an applicant licensed as a polygraph examiner in another state must, upon application to the department and payment of the required license fee, be issued an examiner's license without examination if he satisfies the department by affidavit or otherwise that he:

(a) has legally administered polygraph examinations in the state in which he is licensed for at least 1 year before making application under this subsection; and

(b) meets the requirements for licensing set forth in 37-62-202.

(3) No license may be issued without examination under subsection (2) unless the state in which the applicant is licensed has and maintains licensing requirements substantially equivalent to those provided in this chapter and grants reciprocity to examiners licensed in Montana under terms similar to those provided in this section.

History: **En. Sec. 5, Ch. 185, L. 1983.**

37-62-204. Terms of license — renewal. (1) An examiner's license expires at midnight on March 1 of each year and is renewable only after payment of a renewal fee and proof of compliance with continuing education requirements as provided by 37-62-207.

(2) An examiner whose license has expired may at any time within 2 years after the expiration date obtain a renewal license without examination upon payment of a renewal fee to the department. An examiner whose license

expired while he was on active duty in the armed forces of the United States or the national guard may, notwithstanding the provisions of 10-1-605, renew his license without examination within 2 years after discharge from service.

History: **En. Sec. 9, Ch. 185, L. 1983; amd. Sec. 2, Ch. 547, L. 1985.**

Compiler's Comments

1985 Amendment: In (1) substituted present language for "An examiner's license is issued for 1 year or such portion as remains at the time of issuance and may be renewed, if it has not been revoked or suspended, on or before the date of expiration of the license. A license that is not renewed expires at midnight on the date set by the department".

37-62-205. Form of license — display of license. (1) A license issued under the provisions of this chapter must be in the form determined by the department and must include:

(a) the name of the examiner;

(b) the name under which the examiner is to operate; and

(c) the number of the license and the date on which the license was issued.

(2) The license must at all times be posted in a conspicuous place in the principal place of business of the examiner.

History: **En. Sec. 10, Ch. 185, L. 1983.**

37-62-206. Pocket card. Upon the issuance of a license, a pocket card of such size, design, and content as determined by the department must be issued without charge to the examiner, which card is evidence that the examiner is duly licensed.

History: **En. Sec. 11, Ch. 185, L. 1983.**

37-62-207. Continuing education. The department shall establish by rule minimum requirements of professional education and training, consistent with the field of learning and with the standards of professional organizations, for renewal of licenses.

History: **En. Sec. 8, Ch. 185, L. 1983.**

37-62-208. Fees. (1) The department shall adopt and charge nonrefundable application, license, and license renewal fees, commensurate with costs in accordance with 37-1-134.

(2) All fees collected by the department under this section must be deposited in the state special revenue fund for the use of the department in administering this chapter.

History: **En. Sec. 7, Ch. 185, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.**

Compiler's Comments

1983 Amendment: Chapter 281, in (2), substituted "state special revenue fund" for "earmarked revenue fund".

37-62-209. Internship license. (1) Upon application, payment of fees, and approval by the department, a polygraph intern license must be issued to an applicant and is valid for 12 months.

(2) Each licensed intern must be supervised by a licensed polygraph examiner who shall, in accordance with rules established by the department, file reports concerning intern training.

History: **En. Sec. 3, Ch. 547, L. 1985.**

37-62-210 and 37-62-211 reserved.

37-62-212. Suspension and revocation. An examiner's license may be suspended for a fixed period or may be revoked if, after a hearing before the department, it has been determined by competent evidence that the examiner:

(1) has obtained the license by fraudulent representation;

(2) employs misrepresentation, false promises, or misleading advertising for the purpose of directly or indirectly obtaining business;

(3) is incompetent for any reason to act as an examiner;

(4) has allowed his license to be used by an unlicensed person;

(5) has violated the provisions of this chapter or any rule adopted by the department;

(6) has willfully or negligently aided or abetted another examiner in violating the provisions of this chapter or any rule adopted by the department;

(7) has failed to provide, within a reasonable amount of time, information requested by the department relating to a formal complaint filed with the department involving the examiner;

(8) has been adjudicated by a decree of court to be seriously mentally ill;

(9) has failed to inform the examinee of all specific question areas to be explored before questions are actually asked during an examination;

(10) has conducted an examination without having informed the examinee that:

(a) he has the right to refuse to participate in the examination;

(b) he has the right to halt the examination in progress at any time;

(c) he is not required to answer any questions or give any information; and

(d) any information he volunteers could be used against him or made available to the party requesting the examination unless otherwise agreed to in writing; or

(11) has failed to inform the examinee of the results of an examination if requested.

History: En. Sec. 13, Ch. 185, L. 1983.

Cross-References

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director, 37-1-121.

Disciplinary authority of boards — injunctions, 37-1-136.

37-62-213. Hearing. Before refusing an application or suspending or revoking a license, the department shall notify the applicant or examiner by mail not less than 30 days before taking any action. The notice must advise the applicant of the intended action and must include a statement that the applicant or examiner may request a hearing within 20 days of receipt of the notice. If the applicant or examiner requests a hearing within that period, a hearing must be granted, and contested case provisions of the Montana Administrative Procedure Act apply to the hearing. An applicant or examiner who is aggrieved by a final decision in a contested case is entitled to judicial review under the Montana Administrative Procedure Act.

History: En. Sec. 14, Ch. 185, L. 1983.

Cross-References

Administrative Procedure Act, Title 2, ch. 4.

Part 3

Miscellaneous Provisions

37-62-301. Minimum standards for instruments or devices. (1) No person may use or attempt to use any instrument or device for the purpose of detecting deception, verifying truthfulness, or assisting in the reporting of a diagnostic opinion as to deception or truthfulness unless the instrument or device, at a minimum, is capable of visually, permanently, and simultaneously recording indications of an examinee's:

(a) cardiovascular pattern;
(b) respiratory pattern; and
(c) galvanic skin response pattern.

(2) Indications of other psychophysiological changes or bodily responses may also be recorded in addition to the minimum standards provided in subsection (1).

(3) The operation, use, or attempted use by an examiner of an instrument or device that does not meet the minimum requirements provided in subsection (1) is subject to the penalties provided in 37-62-311.

History: En. Sec. 2, Ch. 185, L. 1983.

37-62-302. Inadmissibility of results as evidence. Results of a polygraph examination or other test given by an examiner may not be introduced or admitted as evidence in a court of law.

History: En. Sec. 12, Ch. 185, L. 1983.

37-62-303. Pre-test procedure — termination of examination. (1) An examiner may not administer a polygraph examination without first conducting a pre-test interview with the person to be examined. The examinee must be informed of all issues about which he will be examined and which will be reported by the examiner. All questions to be asked during the examination must be written and read verbatim to the examinee during the pre-test interview.

(2) Written, signed, and dated consent must be given by the examinee prior to any polygraph examination.

(3) Upon the request of the examinee, all pre-test procedures or polygraph examinations in progress must terminate immediately. The examiner may, in his discretion, terminate any examination for any reason.

History: En. Sec. 4, Ch. 547, L. 1985.

37-62-304 through 37-62-310 reserved.

37-62-311. Penalty. Any person who violates any of the provisions o this chapter is guilty of a misdemeanor and is punishable by a fine of not more than $500 or by imprisonment in the county jail for a period not to exceed 6 months or both such fine and imprisonment.

History: En. Sec. 15, Ch. 185, L. 1983.

CHAPTERS 63 AND 64

RESERVED

CHAPTER 65

ARCHITECTURE

Part 1 — General

Section
37-65-101. Purpose.
37-65-102. Definitions.
37-65-103. Exemptions.

Part 2 — Board of Architects

37-65-201. Organization — meetings — records.
37-65-202. Compensation of board members — expenses.
37-65-203. Exclusive licensing jurisdiction — no additional fee.
37-65-204. Rulemaking.

Part 3 — Licensing

37-65-301. License required.
37-65-302. Licensure limited to individuals.
37-65-303. Application — examination — issuance of license.
37-65-304. Examination fee — deposit of fee.
37-65-305. Licensing of and solicitation of business by architects from other states.
37-65-306. Annual renewal — fee — continuing education.
37-65-307. Deposit of license fees.
37-65-308. Seal of architect.
37-65-309. Repealed.
7-65-310 through 37-65-320 reserved.
7-65-321. Revocation or suspension of license — grounds — right to notice and hearing.
7-65-322. Penalty.
7-65-323. Injunction.

---

hapter Cross-References

Construction contracts, Title 18, ch. 2.

Professional service corporations, Title 35, ch. .

Building construction standards, Title 50, ch. 60.

Part 1

General

37-65-101. Purpose. It is hereby declared, as a matter of legislative olicy in the state of Montana, that the practice of architecture is a privilege ranted by legislative authority and is not a natural right of individuals and hat it is necessary, as a matter of such policy and in the interests of the ealth, safety, and welfare of the people of Montana, to provide laws covering he granting of that privilege and its subsequent use, control, and regulation or the purpose of protecting the public from the unprofessional, improper, nauthorized, and unqualified practice of architecture.

History: En. 66-101.1 by Sec. 1, Ch. 544, L. 1977; R.C.M. 1947, 66-101.1.

37-65-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Architect" means an individual technically and legally qualified to practice architecture and who is authorized under this chapter to practice architecture.

(2) "Board" means the board of architects provided for in 2-15-1871.

(3) "Building" means a structure intended primarily for human occupancy or use.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Practice of architecture" means any professional service or creative work requiring the application of advanced knowledge of architectural design, building construction, and standards and involving the constant exercise of discretion and judgment in such activities, in which the safeguarding of life, health, or property is concerned, as consultation, investigation, evaluation, planning, design, or inspection of construction for any public or private building.

(6) "Public building" means any building which the state or any political subdivision thereof maintains for the use of the public.

History: En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R.C.M. 1921; re-en. Sec. 3231, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1957; amd. Sec. 2, Ch. 439, L. 1973; amd. Sec. 26, Ch. 350, L. 1974; amd. Sec. 2, Ch. 544, L. 1977; R.C.M. 1947, 66-103(2); amd. Sec. 5, Ch. 388, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 490, L. 1983.

Compiler's Comments

1983 Amendment: In (5), substituted present definition for "rendering or offering to render services by consultations, preliminary studies, drawings, specifications, or other services in connection with the design of a building or addition or alteration thereto, whether one or all of these services are performed either in person or as the directing head of an organization".

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (4); changed internal references to the department and the board.

37-65-103. Exemptions. (1) Nothing contained in this chapter shall prevent draftsmen, students, clerks of work, superintendents, and other employees of those lawfully practicing as architects under the provisions of this chapter from acting under the instruction, control, or supervision of their employers or to prevent the employment of superintendents of the construction, enlargement, or structural alteration of buildings or any appurtenance thereto.

(2) Nothing contained in this chapter shall be construed to:

(a) apply to alterations to any building which do not involve changes affecting the structural safety thereof or the public health;

(b) prevent the preparation of details and shop drawings by persons other than architects for use in connection with the execution of their work; or

(c) prevent the preparation of drawings or details for fixtures, cabinetwork, furniture, or other interior appliances or equipment or for any work necessary to provide for their installation unless the same involves public health or safety.

(3) None of the acts enumerated in subsections (1) and (2) shall be interpreted or construed as the practice of architecture.

(4) Nothing in this chapter shall be construed to affect or prevent the following, provided that no words, letters, figures, or other device shall be used

n such manner as to tend to convey the impression that the person rendering such service is an architect duly registered under this chapter:

(a) consultants, officers, and employees of the United States while engaged solely in the practice of architecture for said government;

(b) professional engineers from performing architectural services which are purely incidental to their engineering practice;

(c) any person from planning, designing, altering, repairing, supervising, or ngaging in residential construction consisting of less than eight living units egardless of size or cost or farm buildings which are not intended for use or used as a public building;

(d) the planning, design, alteration, construction, repair, or supervision of onstruction of a building by its owner if the building is not intended for use r used as a public building.

History: En. Sec. 7, Ch. 158, L. 1917; re-en. Sec. 3235, R.C.M. 1921; re-en. Sec. 3235, R.C.M. 935; amd. Sec. 2, Ch. 149, L. 1957; amd. Sec. 3, Ch. 439, L. 1973; amd. Sec. 4, Ch. 544, L. 977; R.C.M. 1947, 66-107(b), (c).

ross-References

Policy regarding state practice of architecture, 8-2-111.

Part 2

Board of Architects

art Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1871.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-65-201. Organization — meetings — records. (1) The board ust, during the first week in April of each year, elect from among its umber a president, secretary, and treasurer and must have a seal.

(2) The president and secretary may administer oaths in the examination applications for certificates and to witnesses called before the board for the ansaction of business under this chapter.

(3) The board shall meet at places the board determines during the first eek of April of each year and at other times.

(4) The department must keep a record of proceedings of the board.

(5) The department must keep a register of applicants for a certificate, ith the name and age of applicants, the number of years spent in the study architecture, and whether the applicant was granted a certificate or jected. The register is prima facie evidence of the matters contained in it.

History: En. Sec. 2, Ch. 158, L. 1917; re-en. Sec. 3230, R.C.M. 1921; re-en. Sec. 3230, R.C.M. 35; amd. Sec. 25, Ch. 350, L. 1974; R.C.M. 1947, 66-102.

oss-References

Right to know, Art. II, sec. 9, Mont. Const.

Oath defined, 1-1-201.

Oaths, Title 1, ch. 6.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Public records, Title 2, ch. 6.

Preservation of records, Title 22, ch. 3, part 2.

Duty of Department to keep records, 37-1-101.

Duty of Department to provide facilities, 37-1-101.

Perjury, 45-7-201.

False swearing, 45-7-202.

Disrupting meeting as disorderly conduct, 45-8-101.

37-65-202. Compensation of board members — expenses. Each member of the board is entitled to receive compensation at the rate provided in 37-1-133 and the actual cost of mileage or other reasonable transportation costs, meals, and lodging when engaged in official board business.

History: En. Sec. 9, Ch. 158, L. 1917; re-en. Sec. 3237, R.C.M. 1921; re-en. Sec. 3237, R.C.M. 1935; amd. Sec. 141, Ch. 147, L. 1963; amd. Sec. 2, Ch. 138, L. 1967; amd. Sec. 18, Ch. 93, L. 1969; amd. Sec. 5, Ch. 439, L. 1973; amd. Sec. 28, Ch. 350, L. 1974; amd. Sec. 24, Ch. 439, L. 1975; R.C.M. 1947, 66-109(1); amd. Sec. 30, Ch. 474, L. 1981; amd. Sec. 2, Ch. 490, L. 1983.

Compiler's Comments

1983 Amendment: After "compensation" substituted present language for "and travel expenses as provided for in 37-1-133".

1981 Amendment: Substituted section for "Each member of the board is allowed the sum of $25 per day plus mileage and travel expenses as provided for in 2-18-501 through 2-18-503, while in the discharge of his actual duties".

37-65-203. Exclusive licensing jurisdiction — no additional fee. The board is vested with exclusive jurisdiction to issue licenses for the privilege of practicing architecture. No other state agency or political subdivision of the state, including counties and municipalities, may levy any fee or tax for such privilege.

History: En. Sec. 10, Ch. 158, L. 1917; re-en. Sec. 3238, R.C.M. 1921; re-en. Sec. 3238, R.C.M. 1935; amd. Sec. 3, Ch. 138, L. 1967; amd. Sec. 29, Ch. 350, L. 1974; amd. Sec. 5, Ch. 544, L. 1977; R.C.M. 1947, 66-110(2).

37-65-204. Rulemaking. The board of architects may adopt, amend, or repeal rules necessary for the implementation and enforcement of this chapter in accordance with the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 9, Ch. 490, L. 1983.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-65-301. License required. Except as provided in this chapter, no person may practice architecture in this state or use the title "architect" or "licensed architect" or any words, letters, figures, or other device indicating or intending to imply that he is an architect, without having qualified under this chapter.

History: En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R.C.M. 1921; re-en. Sec. 3231, R.C.M 1935; amd. Sec. 1, Ch. 149, L. 1957; amd. Sec. 2, Ch. 439, L. 1973; amd. Sec. 26, Ch. 350, L 1974; amd. Sec. 2, Ch. 544, L. 1977; R.C.M. 1947, 66-103(1); amd. Sec. 3, Ch. 490, L. 1983.

Compiler's Comments

1983 Amendment: Changed "registered architect" to "licensed architect".

37-65-302. Licensure limited to individuals. No firm, company, partnership, association, corporation, or other similar organization shall be licensed as an architect. Only individuals shall be licensed as architects, but a number of architects constituting a firm may use the collective title "architects" or "licensed architects".

History: **En. Sec. 7, Ch. 158, L. 1917; re-en. Sec. 3235, R.C.M. 1921; re-en. Sec. 3235, R.C.M. 1935; amd. Sec. 2, Ch. 149, L. 1957; amd. Sec. 3, Ch. 439, L. 1973; amd. Sec. 4, Ch. 544, L. 1977; R.C.M. 1947, 66-107(a); amd. Sec. 4, Ch. 490, L. 1983.**

Compiler's Comments

1983 Amendment: Substituted references to licensed architects for references to registered architects.

37-65-303. Application — examination — issuance of license. (1) A person wishing to practice architecture in this state shall apply to the department for a license to do so. A person applying shall have successfully completed the requirement of prerequisites in education, practical experience, and a written examination as prescribed by the board. The examination must be in substantial conformance with the standard national council of architectural registration boards examination and grading procedure, except as modified by board rules.

(2) After examination the department shall, if the candidate has been found qualified, grant a license to the candidate to practice architecture in this state, which may only be granted on the consent of not less than two members of the board, attested by the secretary, and have the seal of the board attached.

History: **En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R.C.M. 1921; re-en. Sec. 3231, R.C.M. 935; amd. Sec. 1, Ch. 149, L. 1957; amd. Sec. 2, Ch. 439, L. 1973; amd. Sec. 26, Ch. 350, L. 974; amd. Sec. 2, Ch. 544, L. 1977; R.C.M. 1947, 66-103(part); amd. Sec. 6, Ch. 388, L. 1979; md. Sec. 5, Ch. 490, L. 1983.**

Compiler's Comments

1983 Amendment: In (1) and (2), substituted "license" for "certificate".

Cross-References

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Duty of Department to administer and grade examinations, 37-1-101.

37-65-304. Examination fee — deposit of fee. (1) Applicants for xamination shall pay in advance to the department a fee set by the board, ommensurate with the cost, which shall defray the entire examination xpense of the candidate. An applicant failing to pass the examination is entiled to reexamination at the next scheduled examination on payment of a easonable fee prescribed by the board.

(2) The money received from the applicant shall be deposited in the state pecial revenue fund for the use of the board, subject to 37-1-101(6).

History: **En. Sec. 8, Ch. 158, L. 1917; re-en. Sec. 3236, R.C.M. 1921; re-en. Sec. 3236, R.C.M. 935; amd. Sec. 140, Ch. 147, L. 1963; amd. Sec. 1, Ch. 138, L. 1967; amd. Sec. 4, Ch. 439, L. 973; amd. Sec. 27, Ch. 350, L. 1974; R.C.M. 1947, 66-108; amd. Sec. 7, Ch. 388, L. 1979; amd. ec. 1, Ch. 277, L. 1983.**

ompiler's Comments

1983 Amendment: Substituted reference to ate special revenue fund for reference to earmarked revenue fund.

37-65-305. Licensing of and solicitation of business by architects from other states. (1) An architect holding a valid and current license to practice in another state, territory, or country may be granted a license to practice in Montana following presentation of a certificate issued by the national council of architectural registration boards and approved by the board. No arrangement may be made under this section which may lower the standard of practice of architecture in this state. The board may, if considered necessary, require an examination of applicants for a license from other states after careful consideration of the credentials from those states. The board shall by rule establish methods and procedures for investigation of applicants for a license by reciprocity.

(2) A nonresident architect who holds an unexpired license to practice architecture issued by the state in which his principal offices are located may, upon furnishing the board with such additional information or certification as it may require, offer architectural services in this state but may accept no commission or otherwise engage in the practice of architecture within this state until licensed by the board.

History: En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R.C.M. 1921; re-en. Sec. 3231, R.C.M 1935; amd. Sec. 1, Ch. 149, L. 1957; amd. Sec. 2, Ch. 439, L. 1973; amd. Sec. 26, Ch. 350, L 1974; amd. Sec. 2, Ch. 544, L. 1977; R.C.M. 1947, 66-103(part); amd. Sec. 6, Ch. 490, L. 1983.

Compiler's Comments

1983 Amendment: Near beginning of (1), substituted "may be granted a license" for "will be granted a certificate"; and inserted (2).

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing investigation and review — record access, 37-1-135.

37-65-306. Annual renewal — fee — continuing education. (1) A licensed architect in this state who desires to continue the practice of his profession shall annually during the month of July, during the time he continues in this practice:

(a) pay to the department a reasonable fee as prescribed by the board; and

(b) present evidence to the board of compliance with any continuing education requirements imposed by the board.

(2) (a) The board may by rule prescribe continuing education requirements for license renewal. If the board prescribes continuing education requirements, the rules shall provide for the method of compliance, such as:

(i) attendance at approved classroom or seminar-type instruction programs; or

(ii) passing an examination.

(b) If classroom or seminar-type instruction is required, the board shall by rule:

(i) make determinations as to approved programs; and

(ii) prescribe the number of hours required for compliance.

(c) If an examination is required, the board shall by rule prescribe:

(i) the subjects of the examination; and

(ii) the grade required to pass the examination.

History: En. Sec. 10, Ch. 158, L. 1917; re-en. Sec. 3238, R.C.M. 1921; re-en. Sec. 3238, R.C.M. 1935; amd. Sec. 3, Ch. 138, L. 1967; amd. Sec. 29, Ch. 350, L. 1974; amd. Sec. 5, Ch. 544, L. 1977; R.C.M. 1947, 66-110(1); amd. Sec. 8, Ch. 388, L. 1979; (2)En. Sec. 9, Ch. 388, L. 1979.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-65-307. Deposit of license fees. All fees and moneys received by the department for licenses from practicing architects shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 9, Ch. 158, L. 1917; re-en. Sec. 3237, R.C.M. 1921; re-en. Sec. 3237, R.C.M. 1935; amd. Sec. 141, Ch. 147, L. 1963; amd. Sec. 2, Ch. 138, L. 1967; amd. Sec. 18, Ch. 93, L. 1969; amd. Sec. 5, Ch. 439, L. 1973; amd. Sec. 28, Ch. 350, L. 1974; amd. Sec. 24, Ch. 439, L. 1975; R.C.M. 1947, 66-109(2); amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

37-65-308. Seal of architect. Every licensed architect shall have a seal, the impression of which must contain the name of the architect, his or her place of business, and the words "Licensed Architect, State of Montana", with which he or she shall stamp all drawings and specifications issued from his or her office for use in this state.

History: En. Sec. 5, Ch. 158, L. 1917; re-en. Sec. 3233, R.C.M. 1921; re-en. Sec. 3233, R.C.M. 1935; R.C.M. 1947, 66-105.

Cross-References

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

37-65-309. Repealed. Sec. 12, Ch. 388, L. 1979.

History: En. Sec. 11, Ch. 158, L. 1917; re-en. Sec. 3239, R.C.M. 1921; re-en. Sec. 3239, R.C.M. 1935; amd. Sec. 30, Ch. 350, L. 1974; R.C.M. 1947, 66-111.

37-65-310 through 37-65-320 reserved.

37-65-321. Revocation or suspension of license — grounds — right to notice and hearing. (1) The board may revoke or suspend a license or take other appropriate disciplinary action if satisfactory proof is presented to the board that the licensee:

(a) obtained his license through fraud or misrepresentation;

(b) has been found guilty of fraud or deceit in his professional practice or has been convicted of a felony related to his professional practice of architecture;

(c) has committed acts of gross incompetency or of recklessness in the planning or construction of buildings;

(d) has violated standards of professional conduct adopted by the board;

(e) has departed, in a material respect, from approved plans or specifications without the consent of the owner or his authorized representative;

(f) except to the extent that the architect reasonably relied upon the advice of another professional in the field of building design and construction, has violated the building codes of this state or a political subdivision;

(g) has aided or abetted an unlicensed person to violate or evade this chapter; or

(h) has sealed or signed plans or specifications or other professional work not prepared under his direct supervision and control.

(2) A license may not be revoked or suspended except under the contested case provisions of the Montana Administrative Procedure Act.

(3) Charges of fraud, deceit, gross incompetence, negligence, or professional misconduct may be brought by any person against any licensee. Such charges shall be in writing, sworn to by the person making them, and filed with the secretary of the board. All charges, unless dismissed by the board as unfounded or trivial, shall be set for hearing within 3 months of filing with the secretary.

History: En. Sec. 12, Ch. 158, L. 1917; re-en. Sec. 3240, R.C.M. 1921; re-en. Sec. 3240, R.C.M. 1935; amd. Sec. 3, Ch. 149, L. 1957; amd. Sec. 4, Ch. 138, L. 1967; amd. Sec. 6, Ch. 439, L. 1973; amd. Sec. 31, Ch. 350, L. 1974; R.C.M. 1947, 66-112; amd. Sec. 7, Ch. 490, L. 1983.

Compiler's Comments

1983 Amendment: Substantially revised section by, among other things, providing for suspension or other action, substituting "license" for "certificate", providing that felonies committed must be related to architecture, allowing a reasonable reliance defense to building code violations, changing the rules for administrative disciplinary proceedings and allowing any person to bring a charge against any licensee. The section formerly read: "(1) The board may revoke a certificate if proof satisfactory to the board is presented of the following:

(a) The certificate was obtained through fraud or misrepresentation.

(b) The holder of the certificate has been found guilty by the board or by a court of justice of fraud or deceit in his professional practice or has been convicted of a felony by a court of justice.

(c) The holder of the certificate has been by the board found guilty of gross incompetency or of recklessness in the planning or construction of buildings.

(d) The holder of the certificate has violated standards of professional conduct adopted by the board.

(2) The board may revoke a certificate if the holder of the certificate has been found guilty by the board of any of the following acts which constitute unprofessional conduct:

(a) willful departure, in a material respect, from approved plans or specifications without the consent of the owner or his authorized representative;

(b) willful violation of the building codes of this state or a political subdivision;

(c) aiding or abetting an unlicensed person to violate or evade this chapter; or

(d) sealing or signing plans or specifications not prepared under his direct supervision and control.

(3) A certificate may not be revoked until the party holding the certificate is given notice and an opportunity for a hearing.

(4) If the board's findings and conclusions are adverse to the accused, his certificate stands revoked and annulled at the expiration of 30 days from the final decision adverse to the party."

Cross-References

Licensure to follow contested case procedure, 2-4-631.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunction, 37-1-136.

Building construction standards, Title 50, ch. 60.

37-65-322. Penalty. Any person who uses the title "architect" or "licensed architect" or any other words, letters, figures, or device indicating or intending to imply that the person using the same is an architect or who shall engage in the practice of architecture within the meaning of this chapter or shall accept compensation for rendering architectural service without first having complied with the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $500 or more than $1,000 or by imprisonment in the county jail for not less than 30 days or more than 6 months or by both such fine and imprisonment. Any person convicted a second time for any violation of this chapter shall be punished by both such fine and imprisonment. The district court shall have jurisdiction of all prosecutions brought hereunder.

History: En. Sec. 6, Ch. 158, L. 1917; re-en. Sec. 3234, R.C.M. 1921; re-en. Sec. 3234, R.C.M. 1935; amd. Sec. 4, Ch. 149, L. 1957; amd. Sec. 3, Ch. 544, L. 1977; R.C.M. 1947, 66-106(1); amd. Sec. 8, Ch. 490, L. 1983.

Compiler's Comments

1983 Amendment: At beginning substituted "licensed architect" for "registered architect", and near end increased fines from $200 and $500 to $500 and $1,000.

37-65-323. Injunction. Whenever the board of architects has reasonable cause to believe that a person is violating any provision of this chapter or rule of the board, it may, in addition to the remedies provided in 37-65-322 and without prejudice thereto, bring an action in the district court for the county in which the violation is occurring to enjoin such person from continuing to engage in such violation or from doing any act in furtherance thereof.

History: En. Sec. 6, Ch. 158, L. 1917; re-en. Sec. 3234, R.C.M. 1921; re-en. Sec. 3234, R.C.M. 1935; amd. Sec. 4, Ch. 149, L. 1957; amd. Sec. 3, Ch. 544, L. 1977; R.C.M. 1947, 66-106(2).

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunction, 37-1-136.

CHAPTER 66

LANDSCAPE ARCHITECTURE

Part 1 — General

Section
37-66-101. Short title.
37-66-102. Purpose.
37-66-103. Definitions.
37-66-104. Acts declared unlawful.
37-66-105. Exemptions.

Part 2 — Board of Landscape Architects

37-66-201. Organization — compensation.
37-66-202. Rulemaking power.

Part 3 — Licensing

37-66-301. License required.
37-66-302. Illegal use of title.
37-66-303. Licensing restricted to individuals — partnerships — local business licensing.
37-66-304. Qualifications not required.
37-66-305. Examinations.
37-66-306. Reciprocity.
37-66-307. Annual renewal — withdrawal — deposit of fees.
37-66-308. Display of license — seal of landscape architect.
37-66-309 through 37-66-320 reserved.
37-66-321. Revocation or suspension of license — grounds — reinstatement.
37-66-322. Penalty.
37-66-323. Prosecution.

Part 1

General

37-66-101. Short title. This chapter shall be known and cited as the "Landscape Architecture Registration and Licensing Act".

History: En. 66-3801 by Sec. 1, Ch. 476, L. 1975; R.C.M. 1947, 66-3801; amd. Sec. 4, Ch. 325, L. 1979.

37-66-102. Purpose. The purpose of this chapter is to safeguard life, health, property, and to promote the public welfare by requiring that only properly qualified persons shall be licensed to practice landscape architecture in this state.

History: En. 66-3802 by Sec. 2, Ch. 476, L. 1975; R.C.M. 1947, 66-3802.

37-66-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of landscape architects provided for in 2-15-1872.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Landscape architect" means a person who holds a certificate to practice landscape architecture in the state of Montana under the provisions of this chapter.

(4) "Landscape architecture" means performing services in conjunction with all aspects of the planning and design of the exterior environment for human use and environmental protection. It includes regional planning of natural resources, urban and rural planning and design, institutional design, park and recreation planning and design, and the preparation of project master plans. It is the design discipline specifically oriented to addressing the problems involved in adapting man's uses of land to the characteristics of the exterior environment both functionally and aesthetically. It includes the preparation of contract documents, construction specifications, construction cost estimates, and project contracts. It includes contract negotiations, project management, and construction management. The term does not include the design of structures or facilities with separate and self-contained purposes that are ordinarily included in the practice of engineering or architecture and does not include the making of land surveys or final land plats for official approval or recording.

History: En. 66-3803 by Sec. 3, Ch. 476, L. 1975; R.C.M. 1947, 66-3803; amd. Sec. 24, Ch. 22, L. 1979; amd. Sec. 5, Ch. 325, L. 1979; amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

37-66-104. Acts declared unlawful. It shall be unlawful for any person to:

(1) offer to practice or hold himself out as entitled to practice landscape architecture unless duly licensed and registered under this chapter;

(2) present as his own the license of another;

(3) give false or forged evidence to the board or any member thereof in obtaining a license;

(4) falsely impersonate any other practitioner of like or different name;
(5) otherwise violate any of the provisions of this chapter.

History: En. 66-3812 by Sec. 14, Ch. 476, L. 1975; R.C.M. 1947, 66-3812(1).

37-66-105. Exemptions. (1) None of the provisions of this chapter prevent employees of those lawfully practicing as landscape architects from acting under the instruction, control, or supervision of their employers.

(2) None of the provisions of this chapter apply to any business conducted in this state by any horticulturist, nurseryman, or landscape nurseryman, plantsman, gardener, landscape gardener, landscape designer, landscape artist, landscape contractor, or land use planner, as these terms are generally used. However, no such person shall use the title "landscape architect", "landscape architecture", or any description tending to convey the impression that he is a licensed landscape architect unless he is licensed as provided in this chapter.

(3) This chapter does not apply to architects, professional engineers, and land surveyors licensed to practice their respective professions.

(4) None of the provisions of this chapter shall apply to any person performing any of the services mentioned in this chapter upon his own property.

(5) None of the provisions of this chapter shall require the hiring of a landscape architect.

History: En. 66-3808 by Sec. 10, Ch. 476, L. 1975; R.C.M. 1947, 66-3808.

Cross-References

Architects, Title 37, ch. 65.

Professional engineers and land surveyors, Title 37, ch. 67.

Part 2

Board of Landscape Architects

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1872.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-66-201. Organization — compensation. (1) At its first meeting of very calendar year, the board shall elect from among its public representative members a chairman, who may appoint a secretary. The secretary may or may not be a member of the board.

(2) The members of the board are entitled to receive compensation and ravel expenses as provided in 37-1-133.

History: En. 82A-1602.30 by Sec. 8, Ch. 476, L. 1975; amd. Sec. 24, Ch. 453, L. 1977; R.C.M. 947, 82A-1602.30(5); amd. Sec. 6, Ch. 325, L. 1979; amd. Sec. 31, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Substituted (2) for "(2) In arrying out the provisions of this chapter, the nly reimbursement members of the board may receive is for travel expenses, as allowed in 2-18-501 through 2-18-503, as amended, incurred in the performance of board duties".

37-66-202. Rulemaking power. The board may promulgate such rules, ncluding setting of fees, as are necessary in the performance of its duties and may hear contested cases arising under this chapter.

History: En. 82A-1602.30 by Sec. 8, Ch. 476, L. 1975; amd. Sec. 24, Ch. 453, L. 1977; R.C.M. 947, 82A-1602.30(4).

Cross-References

Adoption and publication of rules, Title 2, ch. 4.

Contested case procedure, Title 2, ch. 6.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-66-301. License required. In order to safeguard human health and property and to promote the public welfare, any person in either public or private capacity practicing or offering to practice landscape architecture for hire shall be required to submit evidence that he is qualified to so practice and shall be registered under the provisions of this chapter.

History: En. 66-3804 by Sec. 4, Ch. 476, L. 1975; R.C.M. 1947, 66-3804.

37-66-302. Illegal use of title. No person may use the designation "landscape architect" or "landscape architecture" or advertise any title or description tending to convey the impression that he is a landscape architect or practicing landscape architecture unless such person is a landscape architect licensed with the board.

History: En. 66-3810 by Sec. 12, Ch. 476, L. 1975; R.C.M. 1947, 66-3810(part).

37-66-303. Licensing restricted to individuals — partnerships — local business licensing. (1) Certificates of licensing may be issued to natural persons only, but nothing contained in this chapter prevents a duly licensed landscape architect from performing his services for a corporation, firm, partnership, or association.

(2) Each partner in a partnership of landscape architects shall be licensed to practice landscape architecture. Subject to this requirement, a partnership of landscape architects may use a partnership name if the name consists of:

(a) the names of two or more landscape architects; or

(b) the names of one or more landscape architects and one or more professional engineers, architects, or planners.

(3) A person applying to the licensing official of any county or city for a business license to practice landscape architecture shall, at the time of application, exhibit to the licensing official satisfactory evidence under the seal of the board and the hand of its secretary that the applicant possesses a current registration with the board. The license may not be granted until such evidence is presented.

History: En. 66-3809 by Sec. 11, Ch. 476, L. 1975; amd. Sec. 33, Ch. 101, L. 1977; R.C.M. 1947, 66-3809.

37-66-304. Qualifications not required. Each applicant must be admitted to the examination without prerequisite qualifications.

History: En. 66-3805 by Sec. 5, Ch. 476, L. 1975; R.C.M. 1947, 66-3805; amd. Sec. 7, Ch. 325, L. 1979.

37-66-305. Examinations. (1) Examinations for licensure shall be given by the board at least once each year.

(2) Each applicant for licensure as a landscape architect is required to establish by examination his competency to practice the profession of landscape architecture.

(3) The examination given must be the uniform national examination prescribed by the council of landscape architectural boards.

History: En. 66-3806 by Sec. 6, Ch. 476, L. 1975; R.C.M. 1947, 66-3806; amd. Sec. 8, Ch. 325, L. 1979.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-66-306. Reciprocity. The board may certify for licensure without examination an applicant who is legally registered as a landscape architect in any other state or country and who is certified by the council of landscape architectural registration boards.

History: En. 66-3807 by Sec. 9, Ch. 476, L. 1975; R.C.M. 1947, 66-3807(4); amd. Sec. 9, Ch. 325, L. 1979.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-66-307. Annual renewal — withdrawal — deposit of fees. (1) Certification of licensure or renewal of registration expire on the last day of June following their issuance or renewal. Renewal may be effected during the month of June by payment to the department of the required fee. The board shall issue current renewal registration to each landscape architect promptly upon payment of the annual renewal registration fee.

(2) Any registrant in good standing, upon ceasing to practice landscape architecture, may suspend his license by giving written notice to the board. Thereafter, he may resume practice upon payment of the then-current fee and upon approval by the board.

(3) All fees received under the provisions of this chapter shall be deposited in the state special revenue fund by the department. The moneys collected shall be used by the department to carry out the purpose, duties, and responsibilities of the chapter, subject to 37-1-101(6).

History: En. 66-3807 by Sec. 9, Ch. 476, L. 1975; R.C.M. 1947, 66-3807(1) thru (3); amd. Sec. 10, Ch. 325, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-66-308. Display of license — seal of landscape architect. (1) Each holder of a license shall display it in his principal office, place of business, or place of employment.

(2) Each landscape architect shall have a seal approved by the board, which shall contain the name of the landscape architect and the words "Licensed Landscape Architect, State of Montana" and such other words or

figures as the board considers necessary. All drawings and title pages of specifications prepared by such landscape architect or under the supervision of such landscape architect shall be stamped with his seal. Nothing contained herein shall be construed to permit the seal of a landscape architect to serve as a substitute for the seal of a licensed architect, a licensed professional engineer, or a licensed land surveyor.

History: En. 66-3810 by Sec. 12, Ch. 476, L. 1975; R.C.M. 1947, 66-3810(part).

Cross-References

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

37-66-309 through 37-66-320 reserved.

37-66-321. Revocation or suspension of license — grounds — reinstatement. (1) The board may revoke or suspend the license of any landscape architect upon the following grounds:

(a) fraud or deception in procuring the certification or in passing any of the examinations prescribed by this chapter;

(b) conviction of a felony by a court of competent jurisdiction. However, the right to a revoked or suspended license is regained upon termination of state supervision over the licensee.

(c) gross incompetency;

(d) fraud or deceit in the performance of official duties;

(e) willful violation of any of the provisions of this chapter or any of the rules promulgated by the board under the authority of this chapter.

(2) The board may reinstate any revoked or suspended certification upon such terms as it may impose.

History: En. 66-3811 by Sec. 13, Ch. 476, L. 1975; R.C.M. 1947, 66-3811.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Probation, parole, and clemency, Title 46, ch. 23.

37-66-322. Penalty. A person convicted of violating any of the provisions of this chapter shall be fined not to exceed $500. Each violation is considered a separate offense for purposes of this section.

History: En. 66-3812 by Sec. 14, Ch. 476, L. 1975; R.C.M. 1947, 66-3812(2).

37-66-323. Prosecution. All violations of this chapter, when reported to the board and duly substantiated by affidavits or other satisfactory evidence, shall be investigated by it. If the allegation is found to be true, the board shall report such violations to the county attorney of the county in which the violation occurred and request prompt prosecution.

History: En. 66-3813 by Sec. 15, Ch. 476, L. 1975; R.C.M. 1947, 66-3813.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Affidavits, Title 26, ch. 1, part 10.

CHAPTER 67

ENGINEERS AND LAND SURVEYORS

Part 1 — General

Section

37-67-101. Definitions.
37-67-102. Representation as practitioner to be construed as practice.
37-67-103. Exemptions.

Part 2 — Board of Professional Engineers and Land Surveyors

37-67-201. Organization — meetings — quorum — seal.
37-67-202. Rulemaking and subpoena power.
37-67-203. Compensation of board members — expenses.
37-67-204. Record of proceedings — register of applicants.

Part 3 — Licensing

37-67-301. License required to practice or offer to practice.
37-67-302. Practice without a license a public nuisance.
37-67-303. Application — contents — fees.
37-67-304. Municipality may not impose fee.
37-67-305. General qualifications of applicants for registration as professional engineer or engineer-in-training.
37-67-306. Qualifications of applicant for registration as professional engineer.
37-67-307. Qualifications of applicant for registration as engineer-in-training.
37-67-308. General qualifications of applicants for registration as professional land surveyor or land surveyor-in-training.
37-67-309. Qualifications of applicant for registration as professional land surveyor.
37-67-310. Qualifications of applicant for registration as land surveyor-in-training.
37-67-311. Examinations.
37-67-312. Licensure of professional engineers without examination by comity or endorsement.
37-67-313. Comity consideration for land surveyors from other states.
37-67-314. Issuance of certificates — seal of professional engineer or professional land surveyor — enrollment card for trainees.
37-67-315. Biennial renewal — fee — statement of competency.
37-67-316. Replacement of lost or destroyed certificate.
37-67-317. Deposit of moneys collected.
37-67-318. Roster of licensees to be published by department.
37-67-319. Temporary permits for nonresident practitioners.
37-67-320. Practice by partnerships and corporations.
37-67-321. Emeritus status.
37-67-322 through 37-67-330 reserved.
37-67-331. Revocation, suspension, or refusal to renew certificate — grounds — procedure — reinstatement.
37-67-332. Violations — penalties — enforcement.

Chapter Cross-References

Construction contracts, Title 18, ch. 2.

Professional service corporations, Title 35, ch. 4.

Exemption of engineers from licensure as sanitarian, 37-40-102.

Building construction standards, Title 50, ch. 60.

Corner Recordation Act of Montana — surveys and coordinates, Title 70, ch. 22.

Part 1

General

37-67-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of professional engineers and professional land surveyors provided for in 2-15-1873.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Engineer-in-training" means a person who complies with the requirements for education, experience, and character and has passed an examination in the fundamental engineering subjects, as provided in this chapter.

(4) "Professional land surveyor" means a person who has been duly registered and licensed as a land surveyor by the board and is a professional specialist in the technique, analysis, and application of measuring land, skilled and educated in the principles of mathematically related physical and applied sciences, and relevant requirements of law for adequate evidence and all requisites to the surveying of real property and is engaged in the practice of land surveying as herein defined.

(5) "Land surveyor-in-training" means a person who has qualified for, taken, and passed an examination on the basic disciplines of land surveying as provided in this chapter.

(6) "Practice of engineering" means any service or creative work the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, planning the use of water, teaching of advanced engineering subjects, engineering surveys, and the inspection of construction for the purpose of assuring compliance with drawings and specifications; any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of mechanical, electrical, hydraulic, pneumatic, or thermal nature insofar as they involve safeguarding life, health, or property and including such other professional services as may be necessary to the planning, progress, and completion of any engineering services. The term does not include the work ordinarily performed by persons who operate or maintain machinery or equipment, communication lines, signal circuits, electric powerlines, or pipelines.

(7) "Practice of land surveying" means any service or work, the performance of which requires the application of special knowledge of the principles of mathematics, physical sciences, applied sciences, and:

(a) the principles of property boundary law to the recovery and preservation of evidence pertaining to earlier land surveys;

(b) teaching of land surveying subjects;

(c) measurement and allocation of lines, angles, elevations, and coordinate systems;

(d) location of natural and manmade features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water, including such work for the determination of areas and volumes;

(e) monumenting of property boundaries;

(f) platting and layout of lands and the subdivisions thereof, including the alignment and grades of streets and roads therein; and

(g) preparation and perpetuation of maps, plats, field note records, and property descriptions.

(8) "Professional engineer" means a person who, by reason of his special knowledge and use of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and engineering experience, is qualified to practice engineering and who has been duly registered and licensed as a professional engineer by the board.

(9) "Responsible charge" means direct charge and control and personal supervision either of engineering work or of land surveying, as the case may be. Only professional engineers or professional land surveyors may legally assume responsible charge under this chapter.

History: En. Sec. 2, Ch. 366, L. 1975; R.C.M. 1947, 66-2350(part); amd. Sec. 25, Ch. 22, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 2, Ch. 553, L. 1985.

Compiler's Comments

1985 Amendment: In (4) in middle, substituted "technique, analysis, and application of measuring land, skilled and educated in the principles of mathematically related physical and applied sciences" for "technique of measuring land, educated in the basic principles of mathematics, related physical and applied sciences"; in (7) before "performance", deleted "adequate" and before "knowledge", inserted "special"; in (7)(c) at end, inserted "and coordinate systems"; in (9) after "direct", inserted "charge and"; and in (1), (4), and (9), before "land surveyor(s)", inserted "professional".

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

37-67-102. Representation as practitioner to be construed as practice. (1) A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this chapter, who practices any branch of the profession of engineering or who by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional engineer or through the use of some other title implies that he is a professional engineer or that he is registered under this chapter or who holds himself out as able to perform or who does perform any engineering service or work or any other service designated by the practitioner which is recognized as engineering.

(2) Any person shall be construed to practice or offer to practice land surveying, within the meaning and intent of this chapter, who engages in land surveying or who by verbal claim, sign, letterhead, card, or in any other way represents himself to be a professional land surveyor or through the use of some other title implies that he is a professional land surveyor or who represents himself as able to perform or who does perform any land surveying service or work or any other service designated by the practitioner which is recognized as land surveying.

History: En. 66-2369 by Sec. 17, Ch. 366, L. 1975; R.C.M. 1947, 66-2369; amd. Sec. 3, Ch. 553, L. 1985.

Compiler's Comments

1985 Amendment: In (2) in two places inserted "professional" before "land surveyor".

37-67-103. Exemptions. The following are exempt from coverage under this chapter:

(1) the practice of any other legally recognized professions or trades;

(2) the mere execution of work by a contractor, as distinguished from its planning or design or the supervision of the construction of work as a foreman or superintendent;

(3) the work of an employee or a subordinate of a person holding a certificate of registration under this chapter or an employee of a person practicing lawfully under this chapter, provided such work does not include final engineering or land surveying designs or decisions and is done under the direct supervision of a person holding a certificate of registration under this chapter or a person practicing lawfully under this chapter;

(4) the practice of professional engineering by licensed architects where the practice is purely incidental to their practice of architecture.

History: En. 66-2367 by Sec. 15, Ch. 366, L. 1975; R.C.M. 1947, 66-2367; amd. Sec. 4, Ch. 553, L. 1985.

Compiler's Comments

1985 Amendment: Deleted former (5) that read: "the practice of professional engineering or land surveying in this state by a firm, partnership, corporation, or joint-stock association or by its members, officers, or employees on its behalf, if each person personally supervising and in direct charge of all activities of the firm, partnership, corporation, or joint-stock association which constitutes the practice is a professional engineer or land surveyor holding a certificate of registration under this chapter".

Part 2

Board of Professional Engineers and Land Surveyors

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1873.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-67-201. Organization — meetings — quorum — seal. (1) The board shall hold at least two regular meetings each year. Special meetings shall be held at such time as the rules of the board may provide. Notice of all meetings shall be given in such manner as the rules may provide.

(2) The board shall elect annually the following officers: a chairman, a vice-chairman, and a secretary.

(3) A quorum of the board shall consist of not less than five members.

(4) The board shall adopt and have an official seal.

History: (1) thru (3)En. Sec. 8, Ch. 150, L. 1957; Sec. 66-2331, R.C.M. 1947; redes. 66-2352 by Sec. 3, Ch. 366, L. 1975; amd. Sec. 1, Ch. 317, L. 1977; Sec. 66-2352, R.C.M. 1947; (4)En. Sec. 9, Ch. 150, L. 1957; amd. Sec. 3, Ch. 282, L. 1969; Sec. 66-2332, R.C.M. 1947; redes. 66-2353 by Sec. 3, Ch. 366, L. 1975; Sec. 66-2353, R.C.M. 1947; R.C.M. 1947, 66-2352, 66-2353(part); amd. Sec. 4, Ch. 408, L. 1979.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Duty of Department to provide facilities, 37-1-101.

Disrupting meeting as disorderly conduct, 45-8-101.

37-67-202. Rulemaking and subpoena power. (1) The board shall have the power to adopt and amend all rules, including rules of procedure, not inconsistent with the constitution and laws of this state, which may be reasonably necessary for the proper performance of its duties and the regulation of the proceedings before it.

(2) In carrying into effect the provisions of this chapter, the board, under the hand of its chairman and the seal of the board, may subpoena witnesses and compel their attendance and also may require the production of books,

papers, documents, etc., in a case involving the revocation of registration or practicing or offering to practice without registration. Any member of the board may administer oaths or affirmations to witnesses appearing before the board. If any person shall refuse to obey any subpoena so issued or shall refuse to testify or produce any books, papers, or documents, the board may present its petition to the district court setting forth the facts, and thereupon such court shall, in a proper case, issue its subpoena to such person requiring his attendance before such authority and there to testify or to produce such books, papers, and documents as may be deemed necessary and pertinent by the board. Any person failing or refusing to obey the subpoena or order of the court may be proceeded against in the same manner as for refusal to obey any other subpoena or order of said court.

History: En. Sec. 9, Ch. 150, L. 1957; amd. Sec. 3, Ch. 282, L. 1969; Sec. 66-2332, R.C.M. 1947; redes. 66-2353 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2353(part).

Cross-References

Oath defined, 1-1-201.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Oaths, Title 1, ch. 6.

Power of agencies to issue subpoenas, 2-4-104.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Power of hearing officer to issue subpoenas, 2-4-611.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

Duties of boards, 37-1-131.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-67-203. Compensation of board members — expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 6, Ch. 150, L. 1957; Sec. 66-2329, R.C.M. 1947; amd. Sec. 40, Ch. 439, L. 1975; redes. 66-2351 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2351; amd. Sec. 32, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Substituted section for "Each member of the board shall receive per diem when actually attending to the work of the board or any of its committees and for the time spent in necessary travel. Such per diem shall be fixed by the board in its sound discretion, but it shall not exceed $25 per day. In addition thereto, each member shall be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, involved in carrying out the provisions of this chapter".

37-67-204. Record of proceedings — register of applicants. (1) The department shall keep a record of its proceedings and a register of the board's proceedings.

(2) The department shall keep a register of applicants for registration, which shall show:

(a) the name, age, and residence of each applicant;

(b) the date of the application;

(c) the place of business of the applicant;

(d) his educational and other qualifications;

(e) the branch or branches of engineering in which the applicant qualified;

(f) whether an examination was required;

(g) whether the applicant was rejected;

(h) whether a certificate of registration was granted;

(i) the date of the action of the board; and

(j) other information considered necessary by the board.

(3) The records of the department are prima facie evidence of the proceedings of the board, and a transcript thereof, certified by the department, is admissible in evidence as if the original were produced.

History: En. Sec. 11, Ch. 150, L. 1957; Sec. 66-2334, R.C.M. 1947; amd. Sec. 27, Ch. 93, L. 1969; amd. Sec. 217, Ch. 350, L. 1974; redes. 66-2355 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2355.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

Preservation of records, Title 22, ch. 3, part 2.

Contents of writings, recordings, and photographs, Article X, Montana Rules of Evidence (see Title 26, ch. 10).

Duty of Department to keep records, 37-1-101.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-67-301. License required to practice or offer to practice. In order to safeguard life, health, and property and to promote the public welfare, any person in either public or private capacity practicing or offering to practice engineering or land surveying shall hereafter be required to submit evidence that he is qualified so to practice and shall be registered as hereinafter provided. From and after January 1, 1958, it shall be unlawful for any person to practice or to offer to practice in this state engineering or land surveying, as defined in this chapter, or to use in connection with his name or otherwise assume, use, or advertise any title or description tending to convey the impression that he is a professional engineer or a professional land surveyor unless such person has been duly registered under the provisions of this chapter.

History: En. Sec. 1, Ch. 150, L. 1957; Sec. 66-2324, R.C.M. 1947; redes. 66-2349 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2349; amd. Sec. 6, Ch. 553, L. 1985.

Compiler's Comments

1985 Amendment: Near end, before "land surveyor", inserted "professional".

37-67-302. Practice without a license a public nuisance. The practice of engineering or land surveying, as defined herein, without a license is hereby declared to be a public nuisance.

History: En. Sec. 9, Ch. 150, L. 1957; amd. Sec. 3, Ch. 282, L. 1969; Sec. 66-2332, R.C.M. 1947; redes. 66-2353 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2353(part).

Cross-References

Nuisances, Title 27, ch. 30.

37-67-303. Application — contents — fees. (1) Applications for registration shall be on forms prescribed by the board and furnished by the department, shall contain statements made under oath showing the applicant's education and a detailed summary of his technical work, and shall contain not less than five references, of whom three or more shall be professional engineers or professional land surveyors having personal knowledge of his engineering or land surveying experience.

(2) The fee for engineer-in-training is as prescribed by the board and shall accompany the application and shall include the cost of one examination. No additional fee is required for issuance of a certificate.

(3) The application fee for registration as a professional engineer is as prescribed by the board for those holding an engineer-in-training certificate validated for Montana. For those holding a valid engineer-in-training certificate from some other state, the application fee is as prescribed by the board, which includes cost of verification of engineer-in-training certification and one examination. Upon approval of application for registration as a professional engineer, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate as a professional engineer.

(4) The department, subject to approval by the board, may, on approval of the application, payment of a fee as prescribed by the board and payment of an additional fee equal to the appropriate renewal fee, issue a certificate of registration as a professional engineer to a person who holds a certificate of qualification or registration issued to him by the committee on national engineering certification of the national council of engineering examiners or by a state, territory, or possession of the United States or by another country if the applicant's qualifications meet the requirements of this chapter and the rules of the board.

(5) The fee for land surveyor-in-training is as prescribed by the board, which shall accompany the application and shall include the cost of one examination. No additional fee is required for issuance of a certificate.

(6) The application fee for registration as a professional land surveyor is as prescribed by the board for those holding a land surveyor-in-training certificate validated in Montana. For those holding a valid land surveyor-in-training certificate from some other state, the application fee is as prescribed by the board, which includes cost of verification of the certification. Upon approval of application for registration as a professional land surveyor, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate as a professional land surveyor.

(7) The application fee for registration as both a professional engineer and professional land surveyor is as prescribed by the board for those holding engineer-in-training and land surveyor-in-training certificates validated in Montana. For those holding valid engineer-in-training and land surveyor-in-training certificates from another state, the application fee is as prescribed by the board. The fee shall accompany the application. Upon approval of application for registration as a professional engineer and professional land surveyor, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate.

(8) If the board denies issuance of a certificate of registration to any applicant, the initial fee deposited shall be retained as an application fee.

History: En. Sec. 14, Ch. 150, L. 1957; Sec. 66-2337, R.C.M. 1947; amd. Sec. 5, Ch. 282, L. 1969; amd. Sec. 2, Ch. 364, L. 1971; amd. Sec. 219, Ch. 350, L. 1974; amd. Sec. 7, Ch. 215, L. 1975; redes. 66-2358 by Sec. 6, Ch. 366, L. 1975; amd. Sec. 21, Ch. 101, L. 1977; amd. Sec. 3, Ch. 317, L. 1977; R.C.M. 1947, 66-2358(1) thru (8); amd. Sec. 5, Ch. 408, L. 1979; amd. Sec. 66, Ch. 345, L. 1981; amd. Sec. 1, Ch. 489, L. 1981; amd. Sec. 7, Ch. 553, L. 1985.

Compiler's Comments

1985 Amendment: Near end of (1) inserted "professional" before "engineers" and before "land surveyors"; and in three places in (6) and two places in (7) before "land surveyor", inserted "professional".

1981 Amendments: Chapter 345 deleted "but may not exceed $30, which" and inserted "and" after "prescribed by the board" in the first sentence of (2); deleted "but may not exceed $40" after "as prescribed by the board" near the beginning of (3); deleted "but may not exceed $50," after "as prescribed by the board" in the middle of (3); deleted "but not to exceed $60," after "a fee as prescribed by the board" near the beginning of (4); deleted "but may not exceed $30" after "as prescribed by the board" near the beginning of (5); deleted "but may not exceed $40" after "as prescribed by the board" near the beginning of (6); deleted "but may not exceed $50," after "the application fee is as prescribed by the board" in the middle of (6); deleted "but may not exceed $60" after "as prescribed by the board" near the beginning of (7); and deleted "but may not exceed $100" after "the application fee is as prescribed by the board" in the middle of (7).

Chapter 489 changed "cost of transfer" to "cost of verification" near the middle of (3) and (6); inserted "approval of the" before "application" and "and payment of an additional fee equal to the appropriate renewal fee" near the beginning of (4); deleted "No additional fee is required for issuance of a certificate." near the middle of (6); and made minor change in grammar.

Cross-References

Oath defined, 1-1-201.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-67-304. Municipality may not impose fee. No registration or license fee or tax may be imposed by a municipality or by any other political subdivision of the state on a person registered under this chapter.

History: En. Sec. 14, Ch. 150, L. 1957; Sec. 66-2337, R.C.M. 1947; amd. Sec. 5, Ch. 282, L. 1969; amd. Sec. 2, Ch. 364, L. 1971; amd. Sec. 219, Ch. 350, L. 1974; amd. Sec. 7, Ch. 215, L. 1975; redes. 66-2358 by Sec. 6, Ch. 366, L. 1975; amd. Sec. 21, Ch. 101, L. 1977; amd. Sec. 3, Ch. 317, L. 1977; R.C.M. 1947, 66-2358(9).

37-67-305. General qualifications of applicants for registration as professional engineer or engineer-in-training. To be eligible for admission to examination for professional engineer or engineer-in-training, an applicant must be of good character and reputation. The applicant must submit five references with his application for registration as a professional engineer; three references shall be professional engineers with personal knowledge of his engineering experience. In the case of an application for certification as an engineer-in-training, the applicant must submit three character references.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(part).

37-67-306. Qualifications of applicant for registration as professional engineer. The following is considered minimum evidence satisfactory to the board that the applicant is qualified for registration as a professional engineer:

(1) A graduate of an engineering or engineering technology curriculum of 4 years or more approved by the board as being of satisfactory standing, with a specific record of an additional 4 years or more of progressive experience on engineering projects of a grade and character which indicate to the board that the applicant may be competent to practice engineering, shall be admitted to an 8-hour written examination in the fundamentals of engineering and an 8-hour written examination in the principles and practices of engineering. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice engineering in this state provided he is otherwise qualified.

(2) A graduate of a related science curriculum of 4 years or more, other than engineering or engineering technology, with a specific record of 8 years or more of progressive experience on engineering projects of a grade and character which indicate to the board that the applicant may be competent to practice engineering, may be admitted to an 8-hour written examination in the fundamentals of engineering and an 8-hour written examination in the principles and practices of engineering. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice engineering in this state provided he is otherwise qualified.

(3) A graduate of an engineering or related science curriculum of 4 years or more with a specific record of 20 years or more of progressive experience on engineering projects, of which at least 10 years have been in charge of important engineering projects, of a grade and character which indicate to the board that the applicant may be competent to practice engineering shall be admitted to an 8-hour written examination in the principles and practices of engineering. Upon passing such examination, the applicant shall be granted a certificate of registration to practice engineering in this state provided he is otherwise qualified.

(4) Engineering teaching in a college or university offering an approved engineering curriculum of 4 years or more may be considered as engineering experience in these requirements provided research, product development, or consulting has been a concurrent activity.

History: **En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(part); amd. Sec. 2, Ch. 59, L. 1985.**

Compiler's Comments

1985 Amendment: Near beginning of (1) after "an engineering", inserted "or engineering technology"; and near beginning of (2) after "graduate of", deleted "an engineering or" and after "other than" changed "the ones approved by the board as being of satisfactory standing" to "engineering or engineering technology".

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Licensing investigation and review — record access, 37-1-135.

37-67-307. Qualifications of applicant for registration as engineer-in-training. The following shall be considered as minimum evidence that the applicant is qualified for certification as an engineer-in-training:

(1) A graduate of an engineering or engineering technology curriculum of 4 years or more, approved by the board as being of satisfactory standing, shall be admitted to an 8-hour written examination in the fundamentals of engineering. Upon passing such examination, the applicant shall be certified or enrolled as an engineer-in-training if he is otherwise qualified.

(2) A graduate of a related science curriculum of 4 years or more, other than engineering or engineering technology, with a specific record of 4 or more years of progressive experience on engineering projects of a grade and character satisfactory to the board shall be admitted to an 8-hour written examination in the fundamentals of engineering. Upon passing such examination, the applicant shall be certified or enrolled as an engineer-in-training if he is otherwise qualified.

History: **En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(1)(b); amd. Sec. 1, Ch. 59, L. 1985.**

Compiler's Comments

1985 Amendment: Near beginning of (1) after "an engineering", inserted "or engineering technology"; and near beginning of (2) after "graduate of", deleted "an engineering or" and after "other than" changed "the ones approved by the board as being satisfactory standing" to "engineering or engineering technology".

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Licensing investigation and review — record access, 37-1-135.

37-67-308. General qualifications of applicants for registration as professional land surveyor or land surveyor-in-training. (1) To be eligible for admission to examination for professional land surveyor or land surveyor-in-training, an applicant must be of good character and reputation. The applicant shall submit five references with his application for registration as a professional land surveyor, three of which references shall be professional land surveyors having personal knowledge of his land surveying experience. In the case of an application for certification as a land surveyor-in-training, the applicant shall submit three references, one of whom shall be a professional land surveyor having personal knowledge of the applicant's land surveying experience.

(2) The evaluation of a land surveyor applicant's qualifications involves a consideration of his education, technical and land surveying experience, exhibits of land surveying projects with which he has been associated, recommendations by references, and a reviewing of these categories. A land surveyor-in-training applicant's qualifications may be reviewed at an interview if the board considers it necessary. Minimal educational requirements for those applicants who intend to use education only as evidence of qualification must include 40 quarter credit hours in surveying techniques and principles and practices of surveying curricula prescribed by the board.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(part); amd. Sec. 2, Ch. 489, L. 1981; amd. Sec. 1, Ch. 354, L. 1983; amd. Sec. 8, Ch. 553, L. 1985.

Compiler's Comments

1985 Amendment: In first and second sentences of (1), before "land surveyor", inserted "professional" and near middle of second and third sentences of (1), before "land surveyor(s)", substituted "professional" for "registered"; in (2) near middle of first sentence, after "projects", substituted "with which he has been associated" for "of which he has been in charge", deleted former second and third sentences that read: "An interview may be held at the board's discretion. Educational credit for institute courses, correspondence courses, etc., shall be determined by the board", inserted second sentence, and in last sentence, after "education", inserted "only".

1983 Amendment: Near end of (2), inserted "for those applicants who intend to use education as evidence of qualification".

1981 Amendment: Added last sentence in subsection (2).

Cross-References

Licensing investigation and review — record access, 37-1-135.

37-67-309. Qualifications of applicant for registration as professional land surveyor. One of the following shall be considered as minimum evidence to the board that the applicant is qualified for registration as a professional land surveyor:

(1) have a bachelor of science degree in civil engineering from a school approved by the accreditation board for engineering and technology or a bachelor of science degree in a board-approved curriculum and present evidence satisfactory to the board that, in addition thereto, he has had at least 4 years of combined office and field experience in land surveying, with a minimum of 3 years of experience on land surveying projects under the direct supervision of a professional land surveyor, and have passed the examinations as required by the board;

(2) have 2 years of formal education in a board-approved curriculum above high school level with at least 90 quarter credit hours or equivalent semester hours passed, or the equivalent approved by the board, and present evidence satisfactory to the board that, in addition thereto, he has had at least 6 years of combined office and field experience in land surveying satisfactory to the board, with a minimum of 4 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor, and have passed the examinations as required by the board; or

(3) present evidence satisfactory to the board that he has had at least 10 years of combined office and field experience in land surveying satisfactory to the board, with a minimum of 6 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor, and has passed the examinations as required by the board.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(part); amd. Sec. 2, Ch. 354, L. 1983; amd. Sec. 9, Ch. 553, L. 1985.

Compiler's Comments

1985 Amendment: In lead-in clause inserted "professional" before "land surveyor"; in (1) substituted present language for "have a bachelor of science degree in an approved curriculum and present evidence satisfactory to the board that, in addition thereto, he has had at least 4 years of combined office and field experience in land surveying, with a minimum of 3 years of experience in charge of land surveying projects under the supervision of a registered land surveyor, and have passed the examinations as required by the board"; in (2) near beginning, before "curriculum", substituted "a board-approved" for "an approved" and after "field experience in land surveying", substituted present language of remainder of subsection for "with a minimum of 4 years of experience in charge of land surveying projects under the supervision of a registered land surveyor, and have passed the examinations as required by the board; or"; and in (3) after "field experience in land surveying", substituted present language of remainder of subsection for "with a minimum of 6 years of experience in charge of land surveying projects in Montana, under the supervision of a registered land surveyor, and has passed the examinations as required by the board".

1983 Amendment: Inserted (3).

Cross-References

Licensing investigation and review — record access, 37-1-135.

37-67-310. Qualifications of applicant for registration as land surveyor-in-training. One of the following shall be considered as minimum evidence to the board that the applicant is qualified for registration as a land surveyor-in-training:

(1) have a bachelor of science degree in civil engineering from a school approved by the accreditation board for engineering and technology or a bachelor of science degree in an approved curriculum and present evidence satisfactory to the board that he has had, in addition thereto, at least 2 years of combined office and field experience in land surveying, with a minimum of 1 year in charge of land surveying projects under the supervision of a professional land surveyor, and have passed the written examinations required by the board;

(2) have at least 2 years of formal education in an approved curriculum above high school level with at least 90 quarter credit hours or equivalent semester hours passed, or the equivalent approved by the board, and present evidence satisfactory to the board that, in addition thereto, he has had at least 4 years of combined office and field experience in land surveying, with a minimum of 2 years in charge of land surveying projects under the supervision of a professional land surveyor, and have passed the written examinations required by the board; or

(3) present evidence satisfactory to the board that he has had at least 6 years of combined office and field experience in land surveying, with a minimum of 4 years of experience in charge of land surveying projects in Montana, under the supervision of a professional land surveyor, and has passed the examinations required by the board.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(2)(b); amd. Sec. 3, Ch. 354, L. 1983; amd. Sec. 10, Ch. 553, L. 1985.

Compiler's Comments

1985 Amendment: In (1) at beginning after "have", inserted "a bachelor of science degree in civil engineering from a school approved by the accreditation board for engineering and technology or"; in (1) and (2) before "land surveyor" inserted "professional"; and in (3) near end, before "land surveyor", substituted "professional" for "registered".

1983 Amendment: Inserted (3).

Cross-References

Licensing investigation and review — record access, 37-1-135.

37-67-311. Examinations. Examination requirements are as follows:

(1) The examinations shall be held at times and places as the board directs. The board shall determine the acceptable grade on examinations.

(2) Written examinations may be taken only after the applicant has met the other minimum requirements as given in 37-67-305 through 37-67-310 and has been approved by the board for admission to the examinations as follows:

(a) The examination on engineering fundamentals consists of an 8-hour examination on the fundamentals of engineering. Passing the examination qualifies the examinee for an engineer-in-training certificate provided he has met all other requirements for certification required by this chapter.

(b) The examination on principles and practice of engineering consists of an 8-hour examination on applied engineering. Passing this examination qualifies the examinee for registration as a professional engineer provided he has met the other requirements for registration required by this chapter.

(c) The examinations for land surveyor-in-training consist of two 4-hour examinations, designated as parts I and II, on the basic disciplines of land surveying. Passing these examinations qualifies the examinee for a land surveyor-in-training certificate provided he has met all other requirements for certificates required by this chapter.

(d) The requirements and examinations for professional land surveyor consist of being a land surveyor-in-training and of two 4-hour examinations, designated as parts III and IV, on the applied disciplines of land surveying. Passing these examinations qualifies the examinee for registration as a professional land surveyor provided he has met the other requirements for registration required by this chapter.

(3) A candidate failing one examination may apply for reexamination, which may be granted upon payment of a fee established by the board. Before readmission to the examination in the event of a second failure, the examinee must appear before the board with evidence of having acquired the necessary additional knowledge to qualify.

History: En. 66-2359 by Sec. 7, Ch. 366, L. 1975; R.C.M. 1947, 66-2359; amd. Sec. 11, Ch. 553, L. 1985.

Compiler's Comments

1985 Amendment: In (2)(d) in two places, before "land surveyor", inserted "professional".

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-67-312. Licensure of professional engineers without examination by comity or endorsement. (1) A person holding a certificate of registration to engage in the practice of engineering issued to him by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or any foreign country, based on requirements that do not conflict with the provision of this chapter and were of a standard not lower than that specified in the applicable registration act in effect in this state at the time the certificate was issued, may upon application be registered without further examination.

(2) A person holding a certificate of qualification issued by the committee on national engineering certification of the national council of engineering examiners, whose qualifications meet the requirements of this chapter, may upon application be registered without further examination.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(1)(a)(i).

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-67-313. Comity consideration for land surveyors from other states. A person holding a certificate of registration to engage in the practice of land surveying issued by a proper authority of a state, territory, or possession of the United States or the District of Columbia, based on requirements that do not conflict with the provisions of this chapter and were of a standard not lower than that specified in the applicable registration act in effect in this state at the time the certificate was issued, will be given comity consideration. However, he may be asked to meet the conditions for taking and take such examinations as the board deems necessary to determine his qualifications; but in any event, he shall be required to pass a written examination of not less than 8-hours' duration, which shall include questions on laws, procedures, and practices pertaining to the practice of land surveying in this state.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(2)(a)(iii); amd. Sec. 12, Ch. 553, L. 1985.

Compiler's Comments

1985 Amendment: In first sentence substituted present language for "A person holding a certificate of registration or comparable qualifications to engage in the practice of land surveying issued from a state, territory, or possession of the United States will be given comity consideration"; and near beginning of second sentence, after "asked to", inserted "meet the conditions for taking and".

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-67-314. Issuance of certificates — seal of professional engineer or professional land surveyor — enrollment card for trainees. (1) The department shall issue to any applicant who, in the opinion of the board, has met the requirements of this chapter a certificate of registration giving the registrant proper authority to practice his profession and to assume responsible charge of engineering or land surveying projects in this state. The certificate of registration for a professional engineer shall carry the designation "professional engineer" and for a professional land surveyor, "professional land surveyor". It shall give the full name of the registrant with his serial number and shall be signed by the chairman and the secretary under the seal of the board.

(2) This certificate shall be prima facie evidence that the person named thereon is entitled to all rights, privileges, and responsibilities of a professional engineer or professional land surveyor while the certificate of registration remains unrevoked or unexpired.

(3) Each registrant hereunder may, upon registration, obtain a seal of a design authorized by the board, bearing the registrant's name, serial number, and the legend "professional engineer" and/or "professional land surveyor". Plans, specifications, plats, drawings, reports, design information, and calculations prepared by a registrant must when issued be signed with a written signature, dated, and stamped with the seal or a seal facsimile. It is unlawful for a registrant to affix or permit his seal and signature or seal facsimile to be affixed to any plans, specifications, plats, drawings, reports, design information, or calculations after the expiration of a certificate or for projects for which the registrant was not in responsible charge.

(4) The department shall issue to any applicant who, in the opinion of the board, has met the requirements of this chapter an enrollment card as engineer-in-training or land surveyor-in-training which indicates that his name has been recorded as such in the board office. The engineer-in-training or land surveyor-in-training enrollment card does not authorize the holder to practice as a professional engineer or professional land surveyor.

History: En. 66-2360 by Sec. 8, Ch. 366, L. 1975; R.C.M. 1947, 66-2360; amd. Sec. 13, Ch. 553, L. 1985.

Compiler's Comments

1985 Amendment: In (3) after "the legend "professional engineer"", substituted present language of remainder of subsection for "and/or "land surveyor". Plans, specifications, plats, and reports prepared by a registrant shall when issued be certified, signed, and stamped with the seal or facsimile thereof. It shall be unlawful for a registrant to affix or permit his seal and signature or facsimile thereof to be affixed to any plans, specifications, plats, or reports after the expiration of a certificate or for the purpose of aiding or abetting any other person to evade or attempt to evade any provision of this chapter"; and throughout section, before "land surveyor", inserted "professional".

Cross-References

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

37-67-315. Biennial renewal — fee — statement of competency. (1) Certificates of registration expire every second year on the date established by rule of the department and become invalid on that date unless renewed. The department shall notify every person registered under this chapter of the date of the expiration of his certificate and the amount of the fee required for its renewal for 2 years. This notice shall be mailed at least 1 month in advance of the date of the expiration of the certificate. Renewal may be made prior to the expiration date by the payment of a fee as set by the board for either a professional engineer or professional land surveyor. For renewal of a dual license as both a professional engineer and professional land surveyor, the fee shall be set by the board.

(2) No certificate may be renewed unless the registrant submits a statement to the effect and the board is satisfied that he has maintained competency by:

(a) the continued practice of engineering or land surveying; or

(b) engaging in other activities that provide for the maintenance of competency as prescribed by board rule.

(3) Failure on the part of a registrant to renew his certificate biennially prior to the expiration date does not deprive him of the right of renewal;

however, a registrant who fails to pay the renewal fee for an additional year of the biennium shall be considered a new applicant and is required to submit a new application.

(4) The fee for any registrant who fails to renew his certificate prior to the expiration date shall be increased by an amount not to exceed 50% of his renewal fee. Renewal may not be completed until all fees are paid.

History: En. Sec. 17, Ch. 150, L. 1957; Sec. 66-2340, R.C.M. 1947; amd. Sec. 7, Ch. 282, L. 1969; amd. Sec. 222, Ch. 350, L. 1974; amd. Sec. 8, Ch. 215, L. 1975; redes. 66-2361 by Sec. 9, Ch. 366, L. 1975; R.C.M. 1947, 66-2361; amd. Sec. 6, Ch. 408, L. 1979; amd. Sec. 67, Ch. 345, L. 1981; amd. Sec. 3, Ch. 489, L. 1981; amd. Sec. 8, Ch. 390, L. 1983; amd. Sec. 14, Ch. 553, L. 1985.

Compiler's Comments

1985 Amendment: In (1) in fourth and fifth sentences, before "land surveyor" inserted "professional"; and in (2) near beginning, before "statement", deleted "verified".

1983 Amendment: Near beginning of (1), after "expire" substituted "every second year on the date established by rule of the department" for "on December 31 of the appropriate year"; near end of (1), after "may be made" substituted "prior to the expiration date" for "during the month of December of the appropriate year"; near beginning of (3), after "biennially" substituted "prior to the expiration date" for "in the month of December of the appropriate year"; in (4), after "certificate" substituted "prior to the expiration date" for "by December 31 of the appropriate year".

1981 Amendments: Chapter 345 deleted ", not to exceed $60 biennially," after "by the payment of a fee" in the last sentence of (1).

Chapter 489 deleted ", or both" after "professional engineer or land surveyor" in the fourth sentence of (1); added last sentence in (1); changed "additional renewal period" to "additional year of the biennium" near the end of (3); added subsection (4).

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-67-316. Replacement of lost or destroyed certificate. A new certificate of registration to replace a certificate revoked, lost, destroyed, or mutilated may be issued by the department, subject to the rules of the board.

History: En. 66-2365 by Sec. 13, Ch. 366, L. 1975; R.C.M. 1947, 66-2365(part).

37-67-317. Deposit of moneys collected. The department shall collect all moneys under this chapter and shall deposit these moneys in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 10, Ch. 150, L. 1957; Sec. 66-2333, R.C.M. 1947; amd. Sec. 123, Ch. 147, L. 1963; amd. Sec. 28, Ch. 177, L. 1965; amd. Sec. 216, Ch. 350, L. 1974; redes. 66-2354 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2354; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

37-67-318. Roster of licensees to be published by department. A roster showing the names and addresses of registered professional engineers and registered professional land surveyors shall be published by the department. Copies shall be placed on file with the secretary of state, the clerk of each incorporated city and town, and in the office of each county clerk and recorder within the state and furnished to each person registered and to the public, on request, at a fee established by the board.

History: En. Sec. 12, Ch. 150, L. 1957; Sec. 66-2335, R.C.M. 1947; amd. Sec. 218, Ch. 350, L. 1974; amd. and redes. 66-2356 by Sec. 4, Ch. 366, L. 1975; amd. Sec. 2, Ch. 317, L. 1977; R.C.M. 1947, 66-2356; amd. Sec. 7, Ch. 408, L. 1979; amd. Sec. 15, Ch. 553, L. 1985.

Compiler's Comments

1985 Amendment: In first sentence, before "land surveyors", inserted "professional"; deleted former second sentence that read: "Copies of this roster shall be mailed to each person registered"; and near end of second sentence, after "furnished to", inserted "each person registered and to".

Cross-References

Prohibition on distribution or sale of mailing lists, 2-6-109.

37-67-319. Temporary permits for nonresident practitioners. Temporary permits are governed by the following:

(1) Such a permit may be granted for the practice or offer to practice engineering by a person not a resident of or having no established place of business in this state, provided such person is legally qualified by registration to practice engineering in his own state or country, provided the requirements for registration in his home state or country are not less than those defined in this chapter. Such person shall make application to the board in writing. The application must be accompanied by a fee set by the board. Upon approval by the board, such person may be granted a written permit for a definite period of time not to exceed 1 year to do a specific job; provided, however, no right to practice engineering shall accrue to such applicant with respect to any other works not set forth in the permit.

(2) The practice of land surveying under a temporary permit by a person registered as a professional land surveyor in another state is not considered to be in the best interests of the public and, therefore, may not be granted.

History: En. 66-2368 by Sec. 16, Ch. 366, L. 1975; R.C.M. 1947, 66-2368; amd. Sec. 26, Ch. 22, L. 1979; amd. Sec. 16, Ch. 553, L. 1985.

Compiler's Comments

1985 Amendment: In (2) near middle, before "land surveyor", inserted "professional".

Cross-References

Rules for determining residency, 1-1-215.

37-67-320. Practice by partnerships and corporations. (1) The practice of or offer to practice engineering or land surveying by registered professional engineers or registered professional land surveyors organized as a partnership or incorporated as a professional corporation under the provisions of the professional corporations law of this state or under the provisions of a similar law of any other state is permitted in this state if all the partners of the partnership or each officer and shareholder of the professional corporation are registered under or exempt from this chapter.

(2) The practice of or offer to practice engineering or land surveying by a partnership other than one provided for in subsection (1) or by a corporation, other than a professional corporation, is permitted in this state if:

(a) all officers, employees, and agents of a partnership or corporation who will perform the practice of engineering or land surveying within this state for the partnership or corporation are registered under this chapter;

(b) each person in responsible charge of the activities of a partnership or corporation, which activities constitute the practice of engineering or land surveying, is a professional engineer or professional land surveyor registered in this state or a person authorized to practice engineering or land surveying as provided in this chapter;

(c) the partnership or corporation has been issued a certificate of authorization by the board as provided in subsection (3);

(d) the partnership or corporation is jointly and severally responsible with and for the conduct or acts of its agents, employees, or officers concerning any professional engineering or land surveying services performed or to be executed in this state; an individual practicing engineering or land surveying is not relieved of the responsibility for his conduct or acts performed by reason of his employment by or relationship with the partnership or corporation; and

(e) all final drawings, specifications, plans, reports, or other engineering or land surveying papers or documents involving the practice of engineering or land surveying, when issued, are dated and bear the seals and signatures of the professional engineers or professional land surveyors registered under this chapter by whom or under whose responsible charge they were prepared.

(3) A partnership or corporation desiring a certificate of authorization or the renewal thereof shall file a written application with the board listing the names and addresses of all partners of the partnership or officers and directors of the corporation and the names and addresses of all employees who are registered to practice engineering or land surveying in this state and who are or will be in responsible charge of any engineering or land surveying in this state by the partnership or corporation, together with any other information the board requires. Upon the receipt of an application and of a fee in an amount established by the board for the initial certificate or biennial renewal thereof, the board shall issue to the partnership or corporation a certificate of authorization or a renewal thereof, which certificate of authorization may not be transferred. If the board finds an error in an application or that facts exist which would entitle the board to suspend or revoke a certificate if issued to the applicant, the board shall deny the application. If a change occurs in the information submitted on the application of a partnership or corporation within the term of the authorization, the partnership or corporation shall file with the board a written report listing the change within 30 days after the change occurs. The provisions of this chapter concerning issuance, expiration, renewal, and reissuance of certificates of registration of individuals, except for 37-67-315(2), apply to certificates of authorization issued to partnerships and corporations under this subsection. Partnerships or corporations are subject to disciplinary proceedings and penalties and the board may reprimand them or revoke, suspend, or refuse to renew their certificates of authorization for cause in the same manner and to the same extent as provided in 37-67-331. "Registrant" and "certificate of registration" in 37-67-331 include any partnership or corporation holding a certificate of authorization issued under this subsection and to such certificate of authorization.

History: En. Sec. 5, Ch. 553, L. 1985.

37-67-321. Emeritus status. (1) A registrant who has terminated his practice of engineering or land surveying may apply to the board for emeritus status.

(2) Upon receiving an application for emeritus status accompanied by the fee established by the board, the board shall issue a certificate of emeritus status to the applicant and record the applicant's name in the roster as an emeritus registrant, along with the date he received emeritus status.

(3) An emeritus registrant may retain but may not use his seal and may not practice engineering or land surveying.

(4) The board shall reissue a certificate of registration to an emeritus registrant who pays all application fees, meets all current requirements for registration, and demonstrates to the board's satisfaction that for the 2 years

preceding his application for registration he has met the requirements for maintaining professional competence established under 37-67-315.

History: En. Sec. 19, Ch. 553, L. 1985.

37-67-322 through 37-67-330 reserved.

37-67-331. Revocation, suspension, or refusal to renew certificate — grounds — procedure — reinstatement. (1) The board may reprimand or revoke, suspend, or refuse to renew the certificate of a registrant found guilty of:

(a) fraud or deceit in obtaining a certificate of registration;

(b) gross negligence, incompetency, or misconduct in the practice of engineering or land surveying as a registered professional engineer or professional land surveyor;

(c) a felony;

(d) violation of rules for professional conduct for professional engineers and professional land surveyors adopted by the board;

(e) if a professional land surveyor, failure to comply with the Corner Recordation Act.

(2) Any person may make charges of fraud, deceit, gross negligence, incompetency, or misconduct against a registrant. The charges shall be made by affidavit and subscribed and sworn to by the person making them and filed with the department. The charges shall be investigated by the board and, unless the board dismisses the charges after investigation as unfounded or trivial, it shall act on the charges within 6 months after the date on which the charges were made. The board is considered to have acted on the charges if it has given notice by mail to the licensee of its intent to revoke, suspend, or refuse to renew his license and the notice contains the facts or conduct which warrant the intended action. For purposes of investigation under this section, the board may require that a registrant meet with it.

(3) The board may require a registrant to take a written or oral examination, or both, in a proceeding to reprimand or revoke, suspend, or refuse to renew.

(4) If, after hearing, five or more members of the board vote in favor of sustaining the charges, the board shall reprimand, suspend, refuse to renew, or revoke the certificate of registration of the registered professional engineer or professional land surveyor.

(5) The board, for reasons it considers sufficient, may reissue a certificate of registration to a person whose certificate has been revoked if five or more members of the board vote in favor of the reissuance.

History: En. 66-2365 by Sec. 13, Ch. 366, L. 1975; R.C.M. 1947, 66-2365(part); amd. Sec. 8, Ch. 408, L. 1979; amd. Sec. 17, Ch. 553, L. 1985.

Compiler's Comments

1985 Amendment: Inserted last sentence of (2); and in four places throughout section, before "land surveyor(s)", inserted "professional".

Cross-References

Oath defined, 1-1-201.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Licensing to follow contested case procedure 2-4-631.

Affidavits, Title 26, ch. 1, part 10.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Perjury, 45-7-201.

False swearing, 45-7-202.

Corner Recordation Act of Montana, Title 70, ch. 22, part 1.

37-67-332. Violations — penalties — enforcement. (1) A person who practices or offers to practice engineering or land surveying in this state without being registered under this chapter or a person presenting or attempting to use as his own the certificate of registration or the seal of another or a person who gives false or forged evidence to the board or department in obtaining a certificate of registration or a person who falsely impersonates another registrant or a person who attempts to use an expired, revoked, or emeritus certificate of registration or a person who violates this chapter is guilty of a misdemeanor and shall on conviction be fined not less than $100 or more than $500 or imprisoned for a period not exceeding 3 months, or both.

(2) All officers of the law of this state or a political subdivision thereof shall enforce this chapter and prosecute persons violating it. The attorney general shall act as legal adviser of the board and render legal assistance necessary in carrying out this chapter.

History: En. Sec. 23, Ch. 150, L. 1957; Sec. 66-2346, R.C.M. 1947; amd. Sec. 225, Ch. 350, L. 1974; redes. 66-2366 by Sec. 14, Ch. 366, L. 1975; R.C.M. 1947, 66-2366; amd. Sec. 18, Ch. 53, L. 1985.

Compiler's Comments

1985 Amendment: In (1) before third "certificate of registration", inserted "or emeritus".

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Forgery, 45-6-325.

CHAPTER 68

ELECTRICIANS AND ELECTRICAL SAFETY

Part 1 — General

ection
7-68-101. Purpose.
7-68-102. Definitions.
7-68-103. Exemptions.

Part 2 — State Electrical Board

7-68-201. Organization — meetings — quorum — rulemaking power — seal.
7-68-202. Compensation and expenses of board members.

Part 3 — Licensing

7-68-301. License required to engage in electrical work.
7-68-302. Unauthorized use of title.
7-68-303. Apprentice may work under licensed electrician — record of apprentices.
7-68-304. Master electricians — application — qualifications — contents of examination.
7-68-305. Journeyman and residential electricians — application — qualifications — contents of examination.

37-68-306. Temporary permits pending examination.
37-68-307. Examination procedure — issuance of master, journeyman, or residential electrician's license — expiration.
37-68-308. Licensure without examination of persons licensed locally.
37-68-309. Electricians licensed by other states — reciprocity.
37-68-310. Annual renewal.
37-68-311. Examination fee — annual fee — specific exemption for apprentices.
37-68-312. Electrical contractor's license — application — issuance — fees — renewal.
37-68-313. Reasonable fees — deposit of money collected.
37-68-314. Qualifications for licensing examination — when no discretion in board.
37-68-315 through 37-68-320 reserved.
37-68-321. Suspension or revocation of license.
37-68-322. Penalty.

Chapter Cross-References

Construction contracts, Title 18, ch. 2.

Building construction standards, Title 50, ch. 60.

Part 1

General

37-68-101. Purpose. The purpose of this chapter is to:

(1) protect the health and safety of the people of this state from the danger of electrically caused shocks, fires, and explosions;

(2) protect property from the hazard of electrically caused fires and explosions;

(3) establish a procedure for determining where and by whom electrical installations are to be made;

(4) assure the public that persons making electrical installations are qualified; and

(5) insure that the electrical installations and electrical products made and sold in this state meet minimum safety standards.

History: En. Sec. 2, Ch. 148, L. 1965; amd. Sec. 19, Ch. 366, L. 1969; amd. Sec. 1, Ch. 425, L. 1973; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 269, Ch. 350, L. 1974; amd. Sec. 8, Ch. 504, L. 1977; R.C.M. 1947, 66-2802(part).

37-68-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the state electrical board provided for in 2-15-1874.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Electrical contractor" means a person, firm, partnership, corporation, association, or combination of these who undertakes or offers to undertake for another the planning, laying out, supervising, and installing or the making of additions, alterations, and repairs in the installation of wiring apparatus and equipment for electric light, heat, and power. A registered electrical engineer who plans or designs electrical installations is not an electrical contractor.

(4) "Journeyman electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes under the rules governing this work.

(5) "Master electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to properly plan, lay out, and supervise the installation and repair of wiring apparatus and equipment for electric light, heat, power, and other purposes under the rules governing this work.

(6) "Residential electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes in residential construction consisting of less than five living units in a single structure under the rules governing this work.

History: En. Sec. 3, Ch. 148, L. 1965; amd. Sec. 270, Ch. 350, L. 1974; R.C.M. 1947, 66-2803; amd. Sec. 4, Ch. 546, L. 1979; amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

37-68-103. Exemptions. (1) Nothing in this chapter shall be deemed to apply to the installation, alteration, or repair of electrical signal or communications equipment owned or operated by a public utility or a city.

(2) The licensing or inspection provisions of this chapter do not apply to regularly employed maintenance electricians doing maintenance work on the business premises of their employer, nor do they apply to line work on the business premises of the employer or to ordinary and customary in-plant or on-site installations, modifications, additions, or repairs.

(3) Nothing in this chapter shall be construed to require an individual to hold a license while or for doing electrical work on his own property or residence provided that said property or residence is maintained for his own use.

(4) An individual, firm, partnership, or corporation may engage in business as an electrical contractor without an electrician's license if all electrical work performed by such individual, firm, partnership, or corporation is under the direction, control, and supervision of a licensed master electrician or under the direction, control, and supervision of a journeyman electrician for residential construction consisting of less than five living units in a single structure.

(5) Any person who plugs in an electrical appliance where an approved electrical outlet is already installed shall not be considered as an installer.

(6) No provisions of this chapter shall in any manner interfere with, hamper, preclude, or prohibit any vendor of any electrical appliance from selling, delivering, and connecting any electrical appliance if the connection does not necessitate the installation of electrical wiring of the structure where the appliance is to be connected.

History: En. Sec. 12, Ch. 148, L. 1965; amd. Sec. 1, Ch. 423, L. 1973; amd. Sec. 1, Ch. 269, L. 1975; R.C.M. 1947, 66-2812; amd. Sec. 5, Ch. 546, L. 1979.

Cross-References

Exceptions to electrical installation requirements, 50-60-602.

Part 2

State Electrical Board

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1874.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-68-201. Organization — meetings — quorum — rulemaking power — seal. (1) Each July the board shall elect from its membership a president, vice-president, and secretary-treasurer.

(2) The board shall meet quarterly and at such other times it considers necessary.

(3) A majority of the members of the board shall constitute a quorum for transaction of business.

(4) The board may:

(a) adopt rules for the administration of this chapter and for the licensing of electrical contractors and the examination and licensing of master and journeymen electricians;

(b) adopt a seal;

(c) cause the prosecution and enjoinder of persons violating this chapter.

History: (1), (2), (4)En. Sec. 5, Ch. 148, L. 1965; amd. Sec. 272, Ch. 350, L. 1974; amd. Sec. 11, Ch. 453, L. 1977; Sec. 66-2805, R.C.M. 1947; (3)En. Sec. 4, Ch. 148, L. 1965; amd. Sec. 1, Ch. 374, L. 1973; Sec. 66-2804, R.C.M. 1947; amd. and redes. 82A-1602.10 by Sec. 271, Ch. 350, L. 1974; amd. Sec. 58, Ch. 439, L. 1975; Sec. 82A-1602.10, R.C.M. 1947; R.C.M. 1947, 66-2805(1), (2)(a) thru (2)(c), 82A-1602.10(5).

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Duty of Department to provide facilities, 37-1-101.

Disrupting meeting as disorderly conduct, 45-8-101.

37-68-202. Compensation and expenses of board members. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: Ap. p. Sec. 4, Ch. 148, L. 1965; amd. Sec. 1, Ch. 374, L. 1973; Sec. 66-2804, R.C.M. 1947; amd. and redes. 82A-1602.10 by Sec. 271, Ch. 350, L. 1974; amd. Sec. 58, Ch. 439, L. 1975; Sec. 82A-1602.10, R.C.M. 1947; Ap. p. Sec. 5, Ch. 148, L. 1965; amd. Sec. 272, Ch. 350, L. 1974; amd. Sec. 11, Ch. 453, L. 1977; Sec. 66-2805, R.C.M. 1947; R.C.M. 1947, 66-2805(3), 82A-1602.10(4); amd. Sec. 33, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Substituted section for "Each member of the board shall receive $25 per day for each day served in the discharge of his duties, together with travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, incurred in the performance of his duties".

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-68-301. License required to engage in electrical work. A person may not engage in or work at the business, trade, or calling of electrical contractor, residential electrician, journeyman electrician, or master electrician in this state until he has received from the department a license or permit to work as an electrical contractor, residential electrician, journeyman electrician, or master electrician.

History: **En. Sec. 6, Ch. 148, L. 1965; amd. Sec. 274, Ch. 350, L. 1974; R.C.M. 1947, 66-2806; amd. Sec. 6, Ch. 546, L. 1979.**

37-68-302. Unauthorized use of title. No person, firm, partnership, corporation, or association shall assume or use the title or designation of licensed master electrician, licensed journeyman electrician, or residential electrician unless qualified and licensed under this chapter.

History: **En. Sec. 8, Ch. 148, L. 1965; R.C.M. 1947, 66-2808; amd. Sec. 7, Ch. 546, L. 1979.**

37-68-303. Apprentice may work under licensed electrician — record of apprentices. This chapter does not prohibit a person from working as an apprentice in the trade of electrician with an electrician licensed under this chapter and under rules made by the board. The name and residence of each apprentice and the name and residence of his employer shall be filed with the department, and a record shall be kept by the department howing the name and residence of each apprentice.

History: **En. Sec. 17, Ch. 148, L. 1965; amd. Sec. 281, Ch. 350, L. 1974; R.C.M. 1947, 66-2817.**

Cross-References

Apprenticeship, Title 39, ch. 6, part 1.

37-68-304. Master electricians — application — qualifications — contents of examination. (1) An applicant for a master electrician's license hall furnish written evidence that he is a graduate electrical engineer of an accredited college or university and has 1 year of practical electrical experience or that he is a graduate of an electrical trade school and has at least 4 years of practical experience in electrical work or that he has had at least 5 years' practical experience in planning, laying out, supervising, or installing wiring, apparatus, or equipment for electrical light, heat, and power.

(2) Applicants for license as a master electrician shall file an application on forms prescribed by the board and furnished by the department, together with the examination fee. The board shall, not less than 30 days prior to a cheduled written examination, notify each applicant that the evidence submitted with his application is sufficient to qualify him to take the written examination or that the evidence is insufficient and is rejected. If the application is rejected, the board shall set forth the reasons in the notice to the applicant and shall authorize the department to return the applicant's examination fee. The place of examinations shall be designated by the board, and examinations shall be held at least once a year and at other times as, in the opinion of the board, the number of applicants warrants.

(3) The written examination shall consist of at least 30 questions designed o fairly test the applicant's knowledge and his technical application in the ollowing subjects:

(a) the national electrical code;

(b) cost estimating for electrical installments;

(c) procurement and handling of materials needed for electrical installations and repair;

(d) reading of blueprints for electrical work;

(e) drafting and layout of electrical circuits;

(f) knowledge of practical electrical theory.

History: En. Sec. 7, Ch. 148, L. 1965; amd. Sec. 275, Ch. 350, L. 1974; R.C.M. 1947, 66-2807(1).

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Licensing investigation and review — record access, 37-1-135.

37-68-305. Journeyman and residential electricians — application — qualifications — contents of examination. (1) An applicant for a journeyman electrician's license shall furnish written evidence that he has had at least 4 years' apprenticeship in the electrical trade or 4 years' practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power. Applications for license and notice to the applicant shall be made and given as in the case of master electricians' licenses. The written examination for a journeyman's license shall consist of at least 30 questions designed to fairly test the applicant's knowledge and the technical application thereof in the following subjects:

(a) the Ohm's law;

(b) the national electrical code;

(c) layout and practical installation of electrical circuits.

(2) An applicant for a residential electrician's license shall furnish written evidence that he has had at least 2 years' apprenticeship in the electrical trade or 2 years' practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power in residential construction consisting of less than five living units in a single structure. Application for license and notice to the applicant is made and given as in the case of master electricians' licenses. The written examination for a residential electrician's license consists of at least 30 questions designed to fairly test the applicant's knowledge and the technical application thereof in the following subjects:

(a) the Ohm's law;

(b) the national electrical code;

(c) layout and practical installation of electrical circuits in residential construction consisting of less than five living units in a single structure.

History: En. Sec. 7, Ch. 148, L. 1965; amd. Sec. 275, Ch. 350, L. 1974; R.C.M. 1947, 66-2807(2); amd. Sec. 8, Ch. 546, L. 1979.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Licensing investigation and review — record access, 37-1-135.

Apprenticeship, Title 39, ch. 6, part 1.

37-68-306. Temporary permits pending examination. The board may authorize the department to issue a temporary permit to engage in the work of a master electrician, journeyman electrician, or residential electrician to an applicant who furnishes evidence satisfactory to the board that he has the required experience to qualify for the examination and who pays the fee. A temporary permit continues in effect only until the next examination is given and may be revoked by the board at any time. If the applicant is granted a license, a fee paid for the temporary permit shall be applied to the fee required for a license.

History: En. Sec. 10, Ch. 148, L. 1965; amd. Sec. 277, Ch. 350, L. 1974; R.C.M. 1947, 66-2810; amd. Sec. 9, Ch. 546, L. 1979.

37-68-307. Examination procedure — issuance of master, journeyman, or residential electrician's license — expiration. (1) To insure impartiality, the examination for either the master's or journeyman's license shall be by numbers drawn by lot. A paper may not be marked with the name of an applicant, but shall be anonymously graded by the department. The examination passing grade is 75%.

(2) If it is determined that the applicant has passed the examination, the department, on payment by the applicant of the fee, shall issue to the applicant a license which authorizes him to engage in the business, trade, or calling of a residential electrician, journeyman electrician, or master electrician.

(3) Each original license expires on the July 15 which is at least 1 year but not more than 2 years subsequent to the date of issuance.

History: En. Sec. 7, Ch. 148, L. 1965; amd. Sec. 275, Ch. 350, L. 1974; R.C.M. 1947, 66-2807(3); amd. Sec. 10, Ch. 546, L. 1979.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-68-308. Licensure without examination of persons licensed locally. The board may authorize the department to issue a license as a master electrician, journeyman electrician, or residential electrician to an applicant without written examination on satisfactory proof that the applicant has the qualifications to apply for a license under this chapter and is the holder of a valid license issued by a city or other political subdivision of this state which provides for the examination and licensing of electricians.

History: En. Sec. 11, Ch. 148, L. 1965; amd. Sec. 278, Ch. 350, L. 1974; R.C.M. 1947, 66-2811; amd. Sec. 11, Ch. 546, L. 1979.

37-68-309. Electricians licensed by other states — reciprocity. To the extent that other states which provide for the licensing of electricians provide for similar action, the board may grant licenses to electricians licensed by other states on payment by the applicant of the required fee and on furnishing proof to the board that the applicant has qualifications at least equal to those provided herein for applicants for written examinations. Applicants who qualify for a license under this section are not required to take a written examination.

History: En. Sec. 9, Ch. 148, L. 1965; amd. Sec. 276, Ch. 350, L. 1974; R.C.M. 1947, 66-2809.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-68-310. Annual renewal. Licenses of residential electricians, journeyman electricians, or master electricians, unless they have been suspended or revoked by the board, shall be renewed for a period of 1 year by the department on application for renewal made to the department prior to July 15 of the year in which the prior license expired and on the payment of an annual renewal fee. If application for renewal is not made prior to July 15, an additional fee prescribed by the board shall be paid on account of the delinquency in renewal. All applications for renewal must be made prior to August 15 of that year, otherwise the license is forfeited and the applicant is required to pass the examination and pay the fees required of applicants for original licenses.

History: **En. Sec. 7, Ch. 148, L. 1965; amd. Sec. 275, Ch. 350, L. 1974; R.C.M. 1947, 66-2807(4); amd. Sec. 12, Ch. 546, L. 1979; amd. Sec. 68, Ch. 345, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "an additional fee prescribed by the board" for "an additional fee of $5" in the middle of the second sentence.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-68-311. Examination fee — annual fee — specific exemption for apprentices. (1) Master electricians who are not electrical contractors and journeyman or residential electricians installing or intending to install for hire electric wiring or equipment to convey electric current or apparatus to be operated by this current shall make application for a license to the department. The application shall be on a form furnished by the department and accompanied by an examination fee set by the board. The forms shall state the applicant's full name, his address, the extent of his experience, and other information required by the board. If the applicant has complied with the rules adopted by the board and, being qualified, has successfully completed the examination, he shall pay to the department an annual license fee set by the board for a master electrician's license or for a journeyman or a residential electrician's license, and upon receipt of the fee the department shall issue the proper license to the applicant.

(2) A person serving a 4-year electrician apprenticeship under the supervision of a licensed electrician is exempt from the licensing provision of this section during training. Credit for the time spent in an electrical school shall be given to the master electrician, journeyman electrician, residential electrician, or apprentice, up to a total of 2 years, on the 4-year requirement.

History: **En. Sec. 15, Ch. 148, L. 1965; amd. Sec. 280, Ch. 350, L. 1974; R.C.M. 1947, 66-2815; amd. Sec. 13, Ch. 546, L. 1979.**

37-68-312. Electrical contractor's license — application — issuance — fees — renewal. Each electrical contractor shall, before July 1 of each year, file with the department an application in writing for each firm operated by him in this state to obtain a license. A license may not be issued until the applicant meets the requirements and has paid to the department a license fee set by the board for each firm operated by him. Licenses shall bear the date of issue and expire on July 1 following the date of issue. An electrical contractor licensed under this chapter is entitled to have his license renewed for the ensuing year by payment to the department of the license fee before the date of expiration of the license.

History: **En. Sec. 14, Ch. 148, L. 1965; amd. Sec. 279, Ch. 350, L. 1974; R.C.M. 1947, 66-2814; amd. Sec. 14, Ch. 546, L. 1979.**

37-68-313. Reasonable fees — deposit of money collected. All fees established by the board under this chapter must be reasonably related to the respective program costs. Money collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board.

History: En. Sec. 19, Ch. 148, L. 1965; amd. Sec. 282, Ch. 350, L. 1974; R.C.M. 1947, 66-2819; amd. Sec. 15, Ch. 546, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-68-314. Qualifications for licensing examination — when no discretion in board. A person applying for a license as a master electrician, a journeyman electrician, or a residential electrician must be allowed by the state electrical board to take the required examination and be granted a license upon passing the examination if:

(1) he has completed an appropriate training program conducted by a bona fide union;

(2) he has completed the appropriate required apprenticeship; or

(3) he has worked in the electrical field for 10 years and is considered by his employer, as shown by a written statement of the employer, to be capable and qualified to take the examination for the license for which he is applying.

History: En. Sec. 1, Ch. 332, L. 1981.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Apprenticeship, Title 39, ch. 6, part 1.

37-68-315 through 37-68-320 reserved.

37-68-321. Suspension or revocation of license. The board may suspend or revoke a license granted under this chapter for any of the following reasons:

(1) violation of this chapter, the national electrical code, or the rules of the board;

(2) any cause for which issuance of the license could have been denied had it existed and been known to the board;

(3) commission of any act of gross negligence, incompetency, or misconduct as may be determined by the board in the practice of a master, journeyman, or residential electrician or the business of an electrical contractor; or

(4) making a material misstatement, misrepresentation, or fraud in obtaining a license.

History: En. Sec. 5, Ch. 148, L. 1965; amd. Sec. 272, Ch. 350, L. 1974; amd. Sec. 11, Ch. 453, L. 1977; R.C.M. 1947, 66-2805(2)(d); amd. Sec. 16, Ch. 546, L. 1979.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting of disciplinary actions against licensees, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

37-68-322. Penalty. (1) Any person or corporation violating any provision of this chapter shall upon conviction thereof:

(a) if a person, be punished by a fine not more than $500 or by imprisonment for a term not to exceed 6 months or by revocation of his license or by such fine, imprisonment, and revocation, in the discretion of the court; and

(b) if a corporation, be punished by a fine of not more than $1,000.

(2) Any officer or agent of a corporation or member or agent of a partnership or association who shall personally participate in or be accessory to any violation of this chapter by such partnership, association, corporation shall be subject to the penalties herein prescribed for individuals.

History: En. Sec. 20, Ch. 148, L. 1965; R.C.M. 1947, 66-2820.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

CHAPTER 69

PLUMBERS

Part 1 — General

Section

37-69-101. Definitions.
37-69-102. Exceptions.
37-69-103. No penalty for hiring unlicensed plumber.

Part 2 — Board of Plumbers

37-69-201. Chairman — quorum.
37-69-202. Rulemaking power — records.
37-69-203. Compensation of board members — expenses.

Part 3 — Licensing

37-69-301. License required — temporary exception by municipal resolution when licensed plumber not available.
37-69-302. Apprenticeship allowed.
37-69-303. Application — contents — requirements.
37-69-304. Qualifications of applicants for journeyman plumber's license — restriction on authority.
37-69-305. Qualifications of applicants for master plumber's license — restriction on authority.
37-69-306. Examination — issuance of license.
37-69-307. Examination fee and annual renewal fee.
37-69-308. Deposit of fees.
37-69-309. Plumbers licensed by other states — reciprocity.
37-69-310 through 37-69-319 reserved.
37-69-320. License discipline.
37-69-321. Repealed.
37-69-322. Revocation or suspension of license — procedure.
37-69-323. Restrictions on and responsibility for employees of master plumber.
37-69-324. Penalty.

Chapter Cross-References

Construction contracts, Title 18, ch. 2.

Building construction standards, Title 50, ch. 60.

Part 1

General

37-69-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of plumbers provided for in 2-15-1875.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Drainage system" means all the piping inside the walls of a building that conveys sewage or other liquid wastes outside the building to the building sewer but that does not extend more than 2 feet outside the building way.

(4) "Field of plumbing" means the business, trade, or work having to do with the installation, removal, alteration, or repair of plumbing and drainage systems or parts thereof.

(5) "Journeyman plumber" means a person who is authorized to make installation of all sanitary plumbing and potable water supply piping and appliances connected thereto.

(6) "Master plumber" means a person who is authorized by this chapter to plan, estimate, bid, contract for, and supervise plumbing work and who may do the work of a journeyman plumber.

(7) (a) Except as provided in subsection (7)(b), "plumbing system" means all potable water supply and distribution pipes, plumbing fixtures and traps, drainage and vent pipes, and building drains, including their respective joints and connections, devices, receptacles, and appurtenances within the property lines of any premises, up to 20 feet beyond the building foundation line, and includes potable water piping, water heaters, and vents for the premises.

(b) As defined in subsection (7)(a), "plumbing system" does not include water services installed and maintained by water districts or water user associations in which water service is installed by any qualified person appointed or hired by the administrative authority of the water system.

(8) "Public sewer system" means any common sewer carrying liquid wastes from two or more dwellings or any other facility that serves the public.

(9) "Public water supply" means any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that serves 10 or more families or 25 or more persons on a regular and continuous basis.

History: En. 66-2401.1 by Sec. 227, Ch. 350, L. 1974; amd. Sec. 2, Ch. 497, L. 1975; R.C.M. 1947, 66-2401.1; amd. Sec. 4, Ch. 549, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 561, L. 1985.

Compiler's Comments

1985 Amendment: In (7)(a), at beginning inserted "Except as provided in subsection (7)(b)", and near middle after "premises" inserted "up to 20 feet beyond the building foundation line"; and inserted (7)(b).

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2); and changed internal references to the department and the board.

37-69-102. Exceptions. (1) Licensure is not required in the following instances of plumbing installation:

(a) where an owner of a single-family residence used exclusively for his personal use makes the installation himself for all sanitary plumbing and potable water supply piping or where a mobile home dealer makes such installation to existing facilities as part of delivering and setting up a mobile home for a purchaser;

(b) in any mine, mill, smelter, refinery, or railroad;

(c) in a farm or ranch not connected to public water supply and sewage disposal systems;

(d) in cities, towns, water districts, and water user associations extending their own water and sewer mains;

(e) installation of water conditioner services in private dwellings;

(f) minor work by employees or agents of an appliance dealer incidental to the installation of an appliance purchased from the dealer; and

(g) installation of a water meter by a qualified person appointed by the administrative authority of the water system.

(2) This chapter shall not be construed to apply to or to affect plumbing installations in any mines, mills, smelters, refineries, public utilities, railroads, or plumbing installations on farms or ranches not connected to public water supply or sewage disposal systems.

History: **(1)En. Sec. 1, Ch. 203, L. 1949; amd. Sec. 1, Ch. 185, L. 1961; amd. Sec. 1, Ch. 497, L. 1975; Sec. 66-2401, R.C.M. 1947; (2)En. Sec. 15, Ch. 251, L. 1959; amd. Sec. 1, Ch. 44, L. 1973; amd. Sec. 12, Ch. 497, L. 1975; Sec. 66-2426, R.C.M. 1947; R.C.M. 1947, 66-2401(2), 66-2426; amd. Sec. 2, Ch. 661, L. 1985.**

Compiler's Comments

1985 Amendment: In (1)(c) substituted "in a farm or ranch not connected to public water supply" for "in farms or ranches having their own private water supply"; in (1)(d) substituted "in cities, towns, water districts, and water user associations" for "in cities and towns", and after "own" deleted "city"; inserted (1)(g); and in (2) near end after "farms," substituted "or ranches not connected to public water supply" for "having their own individual water supply".

Cross-References

Exceptions to plumbing installation requirements, 50-60-503.

Exceptions to penalty for violation of plumbing installation requirements, 50-60-515.

37-69-103. No penalty for hiring unlicensed plumber. This chapter may not be construed as imposing any penalty on any unlicensed person for hiring or contracting with an unlicensed person to do work in the field of plumbing. However, any person who himself engages in the field of plumbing at a time when he is not duly licensed is subject to the penalties imposed by this chapter.

History: **En. Sec. 4, Ch. 251, L. 1959; amd. Sec. 8, Ch. 497, L. 1975; R.C.M. 1947, 66-2415; amd. Sec. 27, Ch. 22, L. 1979.**

Part 2

Board of Plumbers

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1875.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-69-201. Chairman — quorum. (1) The board shall annually select a chairman from its members.

(2) A majority of the board constitutes a quorum.

History: **(1)En. Sec. 3, Ch. 251, L. 1959; amd. Sec. 235, Ch. 350, L. 1974; Sec. 66-2414, R.C.M. 1947; (2)En. Sec. 9, Ch. 203, L. 1949; amd. Sec. 234, Ch. 350, L. 1974; Sec. 66-2409, R.C.M. 1947; R.C.M. 1947, 66-2409(1), 66-2414(part).**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Duty of Department to provide facilities, 37-1-101.

Disrupting meeting as disorderly conduct, 45-8-101.

37-69-202. Rulemaking power — records. (1) The board may adopt rules necessary to carry out this chapter.

(2) The board shall adopt rules for the transaction of its business, and the department shall keep a record of the board's official actions.

History: (1)En. Sec. 9, Ch. 203, L. 1949; amd. Sec. 234, Ch. 350, L. 1974; Sec. 66-2409, R.C.M. 1947; (2)En. Sec. 3, Ch. 251, L. 1959; amd. Sec. 235, Ch. 350, L. 1974; Sec. 66-2414, R.C.M. 1947; R.C.M. 1947, 66-2409(2), 66-2414(part).

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Public records, Title 2, ch. 6.

Preservation of records, Title 22, ch. 3, part 2.

Duty of Department to keep records, 37-1-101.

37-69-203. Compensation of board members — expenses. A member of the board is entitled to compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 3, Ch. 203, L. 1949; amd. Sec. 16, Ch. 251, L. 1959; amd. Sec. 2, Ch. 185, L. 1961; amd. Sec. 143, Ch. 147, L. 1963; amd. Sec. 2, Ch. 186, L. 1965; amd. Sec. 229, Ch. 350, L. 1974; amd. Sec. 39, Ch. 439, L. 1975; amd. Sec. 4, Ch. 497, L. 1975; R.C.M. 1947, 66-2403(1); amd. Sec. 34, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Substituted section for "A member of the board is entitled to compensation of $20 for each day while actually engaged in the work of the board and reimbursement for travel expenses as provided for in 2-18-501 through 2-18-503".

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-69-301. License required — temporary exception by municipal resolution when licensed plumber not available. Any person working at the field of plumbing in any incorporated city, town, or in any other area served by a public water supply or a public sewer system in this state, either as a master plumber or as a journeyman plumber, or who while working at the field of plumbing shall connect plumbing to or disconnect plumbing from a public water supply or public sewer system shall first secure a state license as hereinafter provided. The council or commission of any city or town or board of directors or managers of a water or sewer district or water utility, in cases where a duly licensed person or persons are not reasonably available, may by ordinance, rule, or resolution duly adopted and upon reasonable notice by certified letter to the board of plumbers and upon their approval, or after 30 days from the date of the postmark of the certified letter if the board fails to respond to the certified letter, authorize the practice in the field of plumbing by a person or persons who have not obtained the state licenses as hereinafter provided until such time as a duly licensed person or persons are reasonably available or until the board of plumbers withdraws its authorization.

History: En. Sec. 1, Ch. 203, L. 1949; amd. Sec. 1, Ch. 185, L. 1961; amd. Sec. 1, Ch. 497, L. 1975; R.C.M. 1947, 66-2401(1); amd. Sec. 3, Ch. 661, L. 1985.

Compiler's Comments

1985 Amendment: In second sentence, near middle after "reasonable notice", inserted "by certified letter", after "upon their approval", inserted "or after 30 days from the date of the postmark of the certified letter if the board fails to respond to the certified letter", and near end after "reasonably available", inserted "or until the board of plumbers withdraws its authorization".

Cross-References

"Registered mail" to include registered or certified mail, 1-1-202.

Metropolitan sanitary and/or storm sewer districts, Title 7, ch. 13, part 1.

Municipal sewage and/or water systems, Title 7, ch. 13, part 43.

37-69-302. Apprenticeship allowed. This chapter does not prohibit a person from working as an apprentice in the trade of plumbing with a plumber licensed by the department under the supervision of a licensed journeyman plumber. Only those apprentices registered with the department of labor and industry will be recognized by the department. The name and residence of each apprentice and the names and residences of their employers shall be filed with the department, and a record shall be kept by the department.

History: En. Sec. 6, Ch. 203, L. 1949; amd. Sec. 232, Ch. 350, L. 1974; amd. Sec. 6, Ch. 497, L. 1975; R.C.M. 1947, 66-2406.

Cross-References

Apprenticeship, Title 39, ch. 6, part 1.

37-69-303. Application — contents — requirements. A person, firm, or corporation desiring to engage in or work in the field of plumbing in this state, either as a master plumber or as a journeyman plumber, shall make application to the department by filing a written application stating his place of residence, age, experience, and the place where he has acquired his experience and shall at a time and place designated by the board be examined as to his qualifications for a license.

History: En. Sec. 4, Ch. 203, L. 1949; amd. Sec. 230, Ch. 350, L. 1974; amd. Sec. 5, Ch. 497, L. 1975; R.C.M. 1947, 66-2404(part).

37-69-304. Qualifications of applicants for journeyman plumber's license — restriction on authority. (1) The following requirements shall be met by applicants for a journeyman plumber's license:

(a) a specific record of 4 years' experience in the field of plumbing of a character satisfactory to the board. This experience requirement may be fulfilled by working 4 years in a major phase of the plumbing business or by completing an apprenticeship program meeting the standards set by the department of labor and industry or the United States department of labor, bureau of apprenticeship, or credit towards this experience requirement may be given for time spent attending an accredited trade or other school specializing in training of value in the field of plumbing and approved by the board.

(b) satisfactory completion of an examination conducted by the department, subject to 37-1-101(4), testing the applicant's knowledge of techniques and methods employed in the field of plumbing and establishing by practical demonstration his competence in the special skills required in the field of plumbing.

(2) A licensed journeyman plumber may perform work only in the employment of a licensed master plumber unless otherwise permitted by rule of the board.

History: **En. Sec. 2, Ch. 203, L. 1949; amd. Sec. 1, Ch. 186, L. 1965; amd. Sec. 228, Ch. 350, L. 1974; amd. Sec. 3, Ch. 497, L. 1975; amd. Sec. 22, Ch. 101, L. 1977; R.C.M. 1947, 66-2402(2), (3).**

Cross-References

Licensing investigation and review — record access, 37-1-135.

Apprenticeship, Title 39, ch. 6, part 1.

37-69-305. Qualifications of applicants for master plumber's license — restriction on authority. (1) The following requirements shall be met by an applicant for a master plumbers' license:

(a) evidence of 4 years' experience as a journeyman plumber in the field of plumbing of a character satisfactory to the board;

(b) evidence of 3 years' experience in supervisory capacities in the field of plumbing, which may run concurrently with the requirement in subsection (1)(a);

(c) satisfactory completion of an examination for master plumbers testing his knowledge of the field of plumbing and demonstrating his skill and ability in the field of plumbing.

(2) A master plumber shall not allow his license to be used by any person or firm, corporation, or business other than his own for the purpose of obtaining permits or for doing plumbing work under his license.

History: **(1)En. Sec. 2, Ch. 203, L. 1949; amd. Sec. 1, Ch. 186, L. 1965; amd. Sec. 228, Ch. 350, L. 1974; amd. Sec. 3, Ch. 497, L. 1975; amd. Sec. 22, Ch. 101, L. 1977; Sec. 66-2402, R.C.M. 1947; (2)En. Sec. 4, Ch. 203, L. 1949; amd. Sec. 230, Ch. 350, L. 1974; amd. Sec. 5, Ch. 497, L. 1975; Sec. 66-2404, R.C.M. 1947; R.C.M. 1947, 66-2402(part), 66-2404(part); amd. Sec. 5, Ch. 549, L. 1979.**

Cross-References

Licensing investigation and review — record access, 37-1-135.

37-69-306. Examination — issuance of license. (1) An applicant for a license to work in the field of plumbing shall be examined as to his qualifications by the department, subject to 37-1-101(4). The department shall examine each applicant for a license to determine his skill and qualifications as a master plumber or journeyman plumber.

(2) The applicant, upon successfully passing the examination prescribed by the board, shall be issued a license authorizing him to engage in the field of plumbing as a master plumber or journeyman plumber in the state of Montana.

(3) In the case of a firm or corporation, the examination and issuance of a license to an individual of the firm or to a principal of the firm or corporation satisfies the requirements of this chapter as to master plumbers but not as to journeyman plumbers. No individual, firm, or corporation may do the work of a master plumber unless licensed under this chapter.

History: **(1), (2)En. Sec. 3, Ch. 203, L. 1949; amd. Sec. 16, Ch. 251, L. 1959; amd. Sec. 2, Ch. 185, L. 1961; amd. Sec. 143, Ch. 147, L. 1963; amd. Sec. 2, Ch. 186, L. 1965; amd. Sec. 229, Ch. 350, L. 1974; amd. Sec. 39, Ch. 439, L. 1975; amd. Sec. 4, Ch. 497, L. 1975; Sec. 66-2403,**

R.C.M. 1947; (3)En. Sec. 4, Ch. 203, L. 1949; amd. Sec. 230, Ch. 350, L. 1974; amd. Sec. 5, Ch. 497, L. 1975; Sec. 66-2404, R.C.M. 1947; R.C.M. 1947, 66-2403(2), 66-2404(part).

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-69-307. Examination fee and annual renewal fee. (1) No applicant for a master plumber's license may submit to the examinations prescribed by the board until he has deposited with the department an examination fee prescribed by the board, and no applicant for a journeyman plumber's license may submit to the examination prescribed by the board until he has deposited with the department an examination fee as prescribed by the board.

(2) A license when issued expires each year on the date established by rule of the department. A license issued to a master plumber or a journeyman plumber may be renewed annually without examination, at any time prior to its expiration, by a written request for its renewal directed to the department and the payment of a fee as set by the board for renewal of a master plumber's license or a fee as set by the board for renewal of a journeyman plumber's license. Renewal is for the period of 1 year.

(3) Fees prescribed by the board pursuant to this section must be reasonably related to the costs incurred by the board in carrying out its respective functions.

History: En. Sec. 5, Ch. 203, L. 1949; amd. Sec. 3, Ch. 185, L. 1961; amd. Sec. 1, Ch. 237, L. 1965; amd. Sec. 231, Ch. 350, L. 1974; amd. Sec. 10, Ch. 215, L. 1975; amd. Sec. 3, Ch. 541, L. 1977; R.C.M. 1947, 66-2405; amd. Sec. 6, Ch. 549, L. 1979; amd. Sec. 9, Ch. 390, L. 1983.

Compiler's Comments

1983 Amendment: In (2), after "issued expires" substituted "each year on the date established by rule of the department" for "1 year from the date of issuance".

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-69-308. Deposit of fees. Money paid for license fees under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 7, Ch. 203, L. 1949; amd. Sec. 144, Ch. 147, L. 1963; amd. Sec. 233, Ch. 350, L. 1974; R.C.M. 1947, 66-2407; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

37-69-309. Plumbers licensed by other states — reciprocity. To the extent that other states that provide for the licensing of plumbers provide for similar action, the board may grant licenses to plumbers licensed by other states on payment by the applicant of the required fee and on furnishing proof to the board that the applicant has qualifications at least equal to those provided herein for applicants for written examinations. Applicants who qualify for a license under this section are not required to take a written examination. The board has authority to adopt rules necessary to implement this action.

History: En. Sec. 5, Ch. 661, L. 1985.

37-69-310 through 37-69-319 reserved.

37-69-320. License discipline. (1) The board may revoke, suspend, restrict, censure, or apply any other disciplinary treatment contemplated by 37-1-136 to any occupational licensee under this chapter for any one or more of the following causes:

(a) performance of plumbing work in the field of plumbing that is below the standards established by the Uniform Plumbing Code;

(b) inadequate supervision that causes or allows plumbing work in the field of plumbing that is below the standards established by the Uniform Plumbing Code;

(c) material deceit in procuring, attempting to procure, or aiding and abetting the procurement of an occupational license to practice in the field of plumbing;

(d) unfitness to provide services in the field of plumbing by reason of negligence or addiction to the use of habit-forming drugs;

(e) physical or mental incompetence which impairs the licensee's ability to deliver adequate service in the field of plumbing;

(f) willful or repeated violation of this chapter or rules adopted hereunder or willful or repeated violation of Title 50, chapter 60, part 5, or rules adopted thereunder; or

(g) unprofessional practice-related conduct as defined by rules adopted by the board.

(2) Any licensee disciplinary action under the jurisdiction of the board shall be conducted as a contested case under the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 6, Ch. 661, L. 1985.

37-69-321. Repealed. Sec. 8, Ch. 661, L. 1985.

History: (1)En. Sec. 8, Ch. 203, L. 1949; Sec. 66-2408, R.C.M. 1947; (2)En. Sec. 8, Ch. 251, L. 1959; amd. Sec. 10, Ch. 497, L. 1975; Sec. 66-2419, R.C.M. 1947; R.C.M. 1947, 66-2408, 66-2419.

37-69-322. Revocation or suspension of license — procedure. (1) Proceedings for the revocation or suspension of a journeyman or master plumber's license may be taken by the board on its motion for matters in its knowledge or may be taken on the information of another. Accusations must be in writing and verified by a party familiar with the facts charged.

(2) On receiving the accusation, the board shall, if it considers the accusation sufficient, make an order setting it for hearing and requiring the accused to appear and answer the charge or accusation at the hearing.

(3) If the accused does not appear, the board may proceed and determine the accusation in his absence. If the accused confesses the accusation or refuses to answer the charge or if on the hearing the board finds the charge or accusation true, it may make an order either revoking the license of the accused or suspending it for a fixed period.

History: (1), (2)En. Sec. 9, Ch. 251, L. 1959; amd. Sec. 238, Ch. 350, L. 1974; amd. Sec. 11, Ch. 497, L. 1975; Sec. 66-2420, R.C.M. 1947; (3)En. Sec. 11, Ch. 251, L. 1959; amd. Sec. 239, Ch. 350, L. 1974; Sec. 66-2422, R.C.M. 1947; R.C.M. 1947, 66-2420, 66-2422.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

Affidavits, Title 26, ch. 1, part 10.

37-69-323. Restrictions on and responsibility for employees of master plumber. A licensed master plumber may employ only apprentice plumbers registered with the state department of labor and industry and only journeyman plumbers who are licensed by the state of Montana. A master plumber is responsible for assuring that all work performed by such employees is in compliance with the state plumbing code.

History: En. Sec. 2, Ch. 203, L. 1949; amd. Sec. 1, Ch. 186, L. 1965; amd. Sec. 228, Ch. 350, L. 1974; amd. Sec. 3, Ch. 497, L. 1975; amd. Sec. 22, Ch. 101, L. 1977; R.C.M. 1947, 66-2402(part).

Cross-References

Apprenticeship, Title 39, ch. 6, part 1.

37-69-324. Penalty. A person who works at the field of plumbing or maintains or conducts a plumbing business or an individual who connects or disconnects plumbing from a public water or sewer system in violation of any provisions of this chapter or at a time when he is not exempt from the provisions of this chapter pursuant to the provisions of a duly enacted and subsisting ordinance of a city or town is guilty of a misdemeanor and, upon conviction thereof in any court of competent jurisdiction, is guilty of a misdemeanor. However, this chapter may not be construed to apply to or affect plumbing or pipefitting as indicated in the 37-69-102 exceptions.

History: En. Sec. 11, Ch. 203, L. 1949; amd. Sec. 4, Ch. 185, L. 1961; amd. Sec. 7, Ch. 497, L. 1975; amd. Sec. 23, Ch. 101, L. 1977; R.C.M. 1947, 66-2411; amd. Sec. 7, Ch. 661, L. 1985.

Compiler's Comments

1985 Amendment: In first sentence, near end after "competent jurisdiction", substituted "is guilty of a misdemeanor" for "shall be punished by a fine of not less than $10 and not more than $100 for each separate offense", and in second sentence substituted "may" for "shall".

Cross-References

"Misdemeanor" defined, 45-2-101.

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Misdemeanor penalty when no penalty specified, 46-18-212.

CHAPTER 70

HEATING, VENTILATION, AIR CONDITIONING
(Repealed. Sec. 195, Ch. 575, L. 1981)

Chapter Compiler's Comments

Histories of Repealed Sections:

37-70-101. En. 66-3501 by Sec. 2, Ch. 504, L. 1975; R.C.M. 1947, 66-3501.

37-70-102. En. 66-3502 by Sec. 3, Ch. 504, L. 1975; R.C.M. 1947, 66-3502.

37-70-103. En. 66-3503 by Sec. 4, Ch. 504, L. 1975; R.C.M. 1947, 66-3503.

37-70-104. En. 66-3515 by Sec. 16, Ch. 504, L. 1975; R.C.M. 1947, 66-3515.

37-70-201. En. 82A-1602.29 by Sec. 1, Ch. 504, L. 1975; R.C.M. 1947, 82A-1602.29(5), (6).

37-70-202. En. 66-3504 by Sec. 5, Ch. 504, L. 1975; R.C.M. 1947, 66-3504.

37-70-203. En. 82A-1602.29 by Sec. 1, Ch. 504, L. 1975; R.C.M. 1947, 82A-1602.29(4); amd. Sec. 28, Ch. 22, L. 1979.

37-70-301. En. 66-3513 by Sec. 14, Ch. 504, L. 1975; R.C.M. 1947, 66-3513.

37-70-302. En. 66-3508 by Sec. 9, Ch. 504, L. 1975; R.C.M. 1947, 66-3508.

37-70-303. En. 66-3506 by Sec. 7, Ch. 504, L. 1975; R.C.M. 1947, 66-3506.

37-70-304. En. 66-3509 by Sec. 10, Ch. 504, L. 1975; R.C.M. 1947, 66-3509.

37-70-305. En. 66-3505 by Sec. 6, Ch. 504, L. 1975; amd. Sec. 31, Ch. 101, L. 1977; R.C.M. 1947, 66-3505.

37-70-306. En. 66-3511 by Sec. 12, Ch. 504, L. 1975; R.C.M. 1947, 66-3511.

37-70-307 through 37-70-310 reserved.

37-70-311. En. 66-3512 by Sec. 13, Ch. 504, L. 1975; R.C.M. 1947, 66-3512.

37-70-312. En. 66-3514 by Sec. 15, Ch. 504, L. 1975; R.C.M. 1947, 66-3514(part).

CHAPTER 71

PUBLIC CONTRACTORS

Part 1 — General Provisions

Section

37-71-101. Definitions.
37-71-102. Administrative powers of department.
37-71-103. Rules.
37-71-104. Records.
37-71-105. Disposal of fees.

Part 2 — Licensing

37-71-201. Unlawful to engage in public contracting business without license.
37-71-202. Certain small or federal public contracts exempt.
37-71-203. Bids to show bidder is licensed.
37-71-204. Classes of licenses — fees.
37-71-205 through 37-71-210 reserved.
37-71-211. Application for license — contents.
37-71-212. Investigation of applicant — issuance of license.
37-71-213. Renewal — waiting period after cancellation.

Part 3 — Enforcement and Penalties

37-71-301. Complaints against licensee — grounds — investigation — hearing — suspension of license — appeals.
37-71-302. Penalty.

Part 1

General Provisions

37-71-101. Definitions. The following words, terms, and phrases in his chapter are, for the purposes hereof, defined as follows:

(1) "Department", unless the context clearly indicates otherwise, means he department of commerce as provided in 2-15-1801.

(2) "Field of contracting" includes but is not limited to the distinct fields of general contracting, mechanical contracting, electrical contracting, and plumbing, heating, and air-conditioning contracting.

(3) A "public contractor", within the meaning of this chapter, includes any person who submits a proposal to or enters into a contract for performing public construction work in the state with the federal government or state of Montana, or with any board, commission, or department thereof, or with any board of county commissioners or any city or town council, or with any agency of any of them, or with any other public board, body, commission, or agency authorized to let or award contracts for any public work when the contract cost, value, or price thereof exceeds the sum of $5,000.

(4) The term "public contractor" includes subcontractors undertaking to perform work within their field of contracting and within the limits of their class of license covered by the original contract or any part thereof, the contract cost, value, or price of which exceeds the sum of $5,000.

History: (1)En. Sec. 1, Ch. 178, L. 1935; re-en. Sec. 2433.1, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1967; amd. Sec. 12, Ch. 52, L. 1977; Sec. 84-3501, R.C.M. 1947; (2)En. Sec. 3, Ch. 178,

L. 1935; re-en. Sec. 2433.3. R.C.M. 1935; amd. Sec. 143, Ch. 516, L. 1973; Sec. 84-3503, R.C.M. 1947; R.C.M. 1947, 84-3501, 84-3503(part); amd. Sec. 1, Ch. 152, L. 1983; amd. Sec. 1, Ch. 240, L. 1983; MCA 1981, 15-50-101; redes. 37-71-101 by Code Commissioner, 1983; 37-71-101(3) redes. 15-50-101 by Code Commissioner, 1985.

Compiler's Comments

1983 Amendments: Chapter 152; in (4) and (5) (now (3) and (4)), increased the contract's value limit from $1,000 to $5,000 for purposes of defining a public contractor.

Chapter 240 inserted (1) and (2); in (5) (now (4)), after "work" inserted clause referring to field of contracting and license class; deleted former (2), which read: "The department of revenue is hereby constituted the "registrar" for the purpose of this chapter."; and made minor changes in phraseology.

37-71-102. Administrative powers of department. The department is empowered to employ such assistance and to procure such records, supplies, and equipment as may be necessary to carry out the provisions of this chapter.

History: En. Sec. 3, Ch. 178, L. 1935; re-en. Sec. 2433.3, R.C.M. 1935; amd. Sec. 143, Ch. 516, L. 1973; R.C.M. 1947, 84-3503(part); amd. Sec. 2, Ch. 240, L. 1983; MCA 1981, 15-50-102; redes. 37-71-102 by Code Commissioner, 1983.

Compiler's Comments

1983 Amendment: After "department" deleted "of revenue".

37-71-103. Rules. The department shall establish rules necessary for the effective implementation of the provisions of this chapter.

History: En. Sec. 5, Ch. 195, L. 1967; amd. Sec. 145, Ch. 516, L. 1973; R.C.M. 1947, 84-3515(part); amd. Sec. 3, Ch. 240, L. 1983; MCA 1981, 15-50-103; redes. 37-71-103 by Code Commissioner, 1983.

Compiler's Comments

1983 Amendment: After "department" deleted "of revenue".

37-71-104. Records. The department shall maintain at Helena, Montana, open to public inspection during office hours, a complete indexed record of all applications and all licenses issued and all certificates of renewal and of cancellations or suspensions thereof and shall furnish a certified copy of any license issued, of renewal certificates, or of the cancellations or suspensions thereof, upon receipt of the sum of $1, and such certified copy shall be received in all courts and elsewhere as prima facie evidence of the facts stated therein.

History: En. Sec. 9, Ch. 178, L. 1935; re-en. Sec. 2433.9, R.C.M. 1935; R.C.M. 1947, 84-3509; amd. Sec. 4, Ch. 240, L. 1983; MCA 1981, 15-50-104; redes. 37-71-104 by Code Commissioner, 1983.

Compiler's Comments

1983 Amendment: Near beginning of section, substituted "department" for "registrar"; after "shall maintain" deleted "in said registrar's office".

37-71-105. Disposal of fees. All moneys collected hereunder shall be deposited by the department with the state treasurer, who shall credit them to the general fund of the state.

History: En. Sec. 8, Ch. 178, L. 1935; re-en. Sec. 2433.8, R.C.M. 1935; amd. Sec. 2, Ch. 266, L. 1971; R.C.M. 1947, 84-3508; amd. Sec. 5, Ch. 240, L. 1983; MCA 1981, 15-50-105; redes. 37-71-105 by Code Commissioner, 1983.

Compiler's Comments

1983 Amendment: Substituted "department" for "registrar".

Part 2

Licensing

Part Cross-References

Department of Commerce to determine residency of public contractors, 18-1-106.

37-71-201. Unlawful to engage in public contracting business without license. It shall be unlawful for any person or any combination of persons to engage in the business or act in the capacity of public contractor as herein defined within the state of Montana without having a license therefor as herein provided.

History: En. Sec. 2, Ch. 178, L. 1935; re-en. Sec. 2433.2, R.C.M. 1935; amd. Sec. 13, Ch. 52, L. 1977; R.C.M. 1947, 84-3502; MCA 1981, 15-50-201; redes. 37-71-201 by Code Commissioner, 1983.

37-71-202. Certain small or federal public contracts exempt. Nothing herein shall require any contractor to pay any license fee on any public contract project of a value less than $5,000, nor shall any contractor be required to have a license hereunder in order to submit a bid or proposal for contracts advertised to be let by the Montana highway commission where federal aid is obtained from the bureau of public roads or the department of agriculture of the United States, neither shall a successful bidder be required to be licensed as provided herein before the awarding and execution of any contract to be let by the state highway commission where federal aid from the bureau of public roads or the department of agriculture of the United States is involved.

History: En. Sec. 5, Ch. 178, L. 1935; re-en. Sec. 2433.5, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1939; amd. Sec. 2, Ch. 195, L. 1967; amd. Sec. 1, Ch. 180, L. 1974; R.C.M. 1947, 84-3505(6); amd. Sec. 2, Ch. 152, L. 1983; MCA 1981, 15-50-202; redes. 37-71-202 by Code Commissioner, 1983.

Compiler's Comments

1983 Amendment: Increased the value limit for exemption from license fees from $1,000 to $5,000.

37-71-203. Bids to show bidder is licensed. All bids and proposals for the construction of any public contract project subject to the provisions of this chapter shall contain a statement showing that the bidder or contractor is duly and regularly licensed hereunder. The number and class of such license then held by such public contractor shall appear upon such bid or proposal, and no contract shall be awarded to any contractor unless he is the holder of a license in the class within which the value of the project shall fall as herein provided.

History: En. Sec. 7, Ch. 178, L. 1935; re-en. Sec. 2433.7, R.C.M. 1935; amd. Sec. 3, Ch. 141, L. 1967; R.C.M. 1947, 84-3507; MCA 1981, 15-50-203; redes. 37-71-203 by Code Commissioner, 1983; amd. Sec. 1, Ch. 87, L. 1985.

Compiler's Comments

1985 Amendment: At end of first sentence deleted "and is not presently working beyond the contract time, including authorized time extensions, on any previously awarded public contract project"; and at end of last sentence deleted "and unless the public contractor has completely executed any previous contract upon which he has worked beyond contract time".

37-71-204. Classes of licenses — fees. (1) Within each field of contracting there shall be three classes of licenses issued under the provisions of this chapter, and such classes of licenses are hereby designated as Classes A, B, and C. Any applicant for a license under the provisions hereof shall specify in his application the field and the class of license applied for.

(2) In any field of contracting:

(a) the holder of a Class A license shall be entitled to engage in the public contracting business within the state without any limitation as to the value of a single public contract project; subject, however, to such prequalification requirements as may be imposed by the public body or bodies referred to in 37-71-101(3). At the time of making the application for such license, the applicant shall pay to the department a fee in the sum of $250.

(b) the holder of a Class B license shall be entitled to engage in the public contracting business within the state but shall not be entitled to engage in the construction of any single public contract project of a value in excess of $100,000 and shall pay to the department as a license fee the sum of $150 for such Class B license at the time of making application therefor;

(c) the holder of a Class C license shall be entitled to engage in the public contracting business within the state but shall not be entitled to engage in the construction of any single public contract project of a value in excess of $25,000 and shall pay to the department as a license fee the sum of $100 at the time of making application therefor.

(3) If a holder of a license for any class within a field of contracting applies for another license for the same class but within a different field of contracting, he shall pay a fee equal to 25% of the fee for the appropriate class of license as provided in subsection (2) to be licensed in the additional field. If an applicant for a license for any class within a field of contracting at the same time applies for a license for the same class but within a different field of contracting, he shall pay the fee for the appropriate class of license as provided in subsection (2) to be licensed in one of the fields of contracting plus 25% of the fee for the same class to be licensed in the other field.

History: En. Sec. 5, Ch. 178, L. 1935; re-en. Sec. 2433.5, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1939; amd. Sec. 2, Ch. 195, L. 1967; amd. Sec. 1, Ch. 180, L. 1974; R.C.M. 1947, 84-3505(1) thru (4); amd. Sec. 6, Ch. 240, L. 1983; MCA 1981, 15-50-204; redes. 37-71-204 by Code Commissioner, 1983.

Compiler's Comments

1983 Amendment: At beginning of (1), inserted "Within each field of contracting"; near end of (1), after "application" inserted "the field and"; at beginning of (2), inserted "In any field of contracting"; in (2)(a), corrected internal reference; in (2)(a), (2)(b), and (2)(c), after "pay to the" substituted "department" for "registrar"; in (2)(a), increased application fee from $200 to $250; in (2)(b), increased project size from $50,000 to $100,000 and increased Class B license fee from $100 to $150; in (2)(c), increased Class C license fee from $10 to $100; and inserted (3).

37-71-205 through 37-71-210 reserved.

37-71-211. Application for license — contents. To obtain a license under this chapter, the applicant shall submit on such forms as the department shall prescribe an application, under oath, which shall contain a statement of the applicant's experience and qualifications as a contractor; the value and character of contract work completed and for whom performed during 5 years prior to the filing of such application; and a complete financial statement on such forms and disclosing such information as shall be required

y the department. Such application shall also contain such other information
s may be requested by the department under such rules as may be adopted
y the department and which will assist the department in determining the
pplicant's fitness to act in the capacity of a public contractor as defined in
his chapter. Such application shall also contain a statement that the appli-
ant desires the issuance of a license under the terms of this chapter and shall
pecify the field of contracting and the class of license applied for.

History: En. Sec. 4, Ch. 178, L. 1935; re-en. Sec. 2433.4, R.C.M. 1935; R.C.M. 1947, 84-3504; md. Sec. 9, Ch. 240, L. 1983; MCA 1981, 15-50-211; redes. 37-71-211 by Code Commissioner, 983.

ompiler's Comments
1983 Amendment: Throughout section, sub-
tituted "department" for "registrar"; near end of section, after "specify the" inserted "field of contracting and the".

37-71-212. Investigation of applicant — issuance of license. It
hall be the duty of the department to investigate and determine the appli-
ant's fitness to act in the capacity of public contractor as defined in this
hapter, and no license shall be issued to such applicant until the expiration
f 10 days from and after the filing of such application. The license so issued
n pursuance of the first application shall entitle the licensee to act as a
ublic contractor within this state, subject to the limitations of such license,
ntil the expiration of the then-current calendar year.

History: En. Sec. 6, Ch. 178, L. 1935; re-en. Sec. 2433.6, R.C.M. 1935; amd. Sec. 1, Ch. 113, . 1937; R.C.M. 1947, 84-3506(part); amd. Sec. 10, Ch. 240, L. 1983; MCA 1981, 15-50-212; edes. 37-71-212 by Code Commissioner, 1983.

ompiler's Comments
1983 Amendment: Near beginning of section,
ubstituted "department" for "registrar".

37-71-213. Renewal — waiting period after cancellation. (1) Any
icense issued under the provisions of this chapter may be renewed for each
uccessive calendar year by obtaining from the department a certificate of
enewal thereof. For the purpose of obtaining such certificate of renewal, the
icensee shall file with the department an application therefor, stating the
field of contracting and class of license applied for and containing at least the
ame information as that required in the application for the original license.
The application for such certificate of renewal must be made to the department on or before March 1 of each successive calendar year, and such renewal certificate shall be good for the then-current calendar year.

(2) At the time of filing the application for a certificate of renewal, the applicant shall pay to the department a license fee equal to 50% of the license fee for the original license, provided that if any applicant for a certificate of renewal shall apply for a renewal under a different field or class from the license theretofore issued to him, such new license shall be issued only upon the same showing and under the same terms and conditions and upon payment of the same fee required for the issuance of an original license.

(3) All certificates of renewal wherein the applicant does not apply for a change in the field or class of license shall be issued by the department to the applicant forthwith when the application is filed and the license renewal fee paid.

(4) After cancellation of a license, such licensee shall not be relicensed during the current calendar year in which the offense was committed.

History: (1) thru (3)En. Sec. 6, Ch. 178, L. 1935; re-en. Sec. 2433.6, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1937; Sec. 84-3506, R.C.M. 1947; (4)En. Sec. 11, Ch. 178, L. 1935; re-en. Sec. 2433.11, R.C.M. 1935; Sec. 84-3511, R.C.M. 1947; R.C.M. 1947, 84-3506(part), 84-3511; amd. Sec. 11, Ch. 240, L. 1983; MCA 1981, 15-50-213; redes. 37-71-213 by Code Commissioner, 1983.

Compiler's Comments

1983 Amendment: Throughout section, substituted "department" for "registrar"; near middle of (1), after "stating the" inserted "field of contracting and"; after "and containing" inserted "at least"; in (2) and (3), before "class" inserted "field or".

Part 3

Enforcement and Penalties

37-71-301. Complaints against licensee — grounds — investigation — hearing — suspension of license — appeals. (1) Any person or other organization may file a duly verified complaint with the department charging that the licensee is guilty of one or more of the following acts or omissions:

(a) abandonment of any contract without legal excuse;

(b) diversion of funds or property received under express agreement for prosecution or completion of a specific contract under this chapter or for a specified purpose in the prosecution or completion of any contract and their application or use for any other contract, obligation, or purpose with intent to defraud or deceive creditors or the owner;

(c) the doing of any willful fraudulent act by the licensee as a public contractor in consequence of which another is substantially injured;

(d) the making of any false statement in any application for a license or renewal thereof;

(e) the failure to comply with the provisions of 18-1-112 requiring preference of products manufactured or produced in this state by Montana industry and labor.

(2) Upon the filing of such complaint, the department shall investigate the charge and within 60 days after the filing of such complaint render and file a decision, with the reasons therefor. If the department's decision be that the licensee has been guilty of any of such acts or omissions, the department shall suspend the contractor's license. At any time within 20 days thereafter, the complainant or the contractor may petition the department for a rehearing. In the order granting or denying such rehearing, the department shall set forth a statement of the particular grounds and reasons for the department's actions on such petition and shall mail a copy of such order to the parties who have appeared in support of or in opposition to the petition for rehearing. If a rehearing be granted, the department shall set the matter for further hearing on due notice to the parties and, within 30 days after submission of the matter, serve the department's decision after rehearing in like manner as an original decision.

(3) The filing of such petition for rehearing as to the department's actions in suspending or canceling such license shall suspend the operation of such action and permit the licensee to continue to do business as a public contractor pending final determination of the controversy.

(4) Within 30 days after the decision on rehearing, any party aggrieved by such decision of the department may appeal therefrom to the district court in and for the county in which the licensee under this chapter resides or does business as a public contractor by serving upon the department a notice of such appeal. The matter shall thereupon be heard de novo by the district court. An appeal may be taken from the decision of the district court in the same manner as appeals in other civil cases.

(5) In all cases where the licensee has filed his notice of appeal from the decision of the department or from the decision of the district court, such licensee shall be entitled to continue to do business as a public contractor pending final decision of the controversy.

History: En. Sec. 10, Ch. 178, L. 1935; re-en. Sec. 2433.10, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1969; amd. Sec. 14, Ch. 52, L. 1977; R.C.M. 1947, 84-3510; amd. Sec. 12, Ch. 240, L. 1983; MCA 1981, 15-50-302; redes. 37-71-301 by Code Commissioner, 1983.

Compiler's Comments

1983 Amendment: Throughout section, substituted "department" for "registrar".

Cross-References

Suspension of license for violation of certain labor laws, 18-2-432.

Montana Rules of Appellate Civil Procedure, Title 25, ch. 21.

37-71-302. Penalty. Any person or other organization acting in the capacity of public contractor within the meaning of this chapter without a license as herein provided shall be guilty of a misdemeanor and shall upon conviction thereof, if an individual, be punished by a fine of not to exceed $500 or by imprisonment in the county jail for a term not to exceed 6 months or by both such fine and imprisonment, in the discretion of the court. The same penalties shall apply upon conviction to any member of a partnership or to any construction, managing, or directing officer of any corporation or other organization consenting to, participating in, or aiding or abetting any such violation of this chapter.

History: En. Sec. 12, Ch. 178, L. 1935; re-en. Sec. 2433.12, R.C.M. 1935; amd. Sec. 15, Ch. 52, L. 1977; R.C.M. 1947, 84-3512; MCA 1981, 15-50-303(1); redes. 37-71-302 by Code Commissioner, 1983; Sec. 37-71-302(2) redes. 15-50-301(2) by Code Commissioner, 1985.

CHAPTER 72

CONSTRUCTION BLASTING

Part 1 — General

Section

37-72-101. Construction blasting restrictions — license required — definitions — exemptions.
37-72-102. Penalty — injunction.

Part 2 — Regulation by Workers' Compensation Division

37-72-201. Rules for use of explosives — variances.
37-72-202. General rulemaking power.
37-72-203. Revocation, suspension, or refusal to renew license — grounds — procedure.

Part 3 — Licensing

37-72-301. General qualifications.
37-72-302. Training and experience requirements.

37-72-303. Licensure by examination — fee.
37-72-304. Issuance of license — fee.
37-72-305. Licensure of persons licensed by other jurisdictions.
37-72-306. Annual renewal.
37-72-307. License — form — pocket card.

Chapter Cross-References

Regulation of explosives and inflammable material by local governments, 7-33-4205.

Part 1

General

37-72-101. Construction blasting restrictions — license required — definitions — exemptions. (1) No person may engage in the practice of construction blasting unless licensed or under the supervision of a person licensed as a construction blaster by the workers' compensation division.

(2) For the purposes of this chapter:

(a) "construction blaster" means a person who engages in construction blasting;

(b) "construction blasting" means the use of explosives to:

(i) reduce, destroy, or weaken any residential, commercial, or other building; or

(ii) excavate any ditch, trench, cut, or hole or reduce, destroy, weaken, or cause a change in grade of any land formation in the construction of any building, highway, road, pipeline, sewerline, or electric or other utility line;

(c) "division" means the workers' compensation division of the department of labor and industry provided for in 2-15-1702;

(d) "explosive" has the meaning given in [50-38-101];

(e) "magazine" has the meaning given in [50-38-101].

(3) Nothing in this chapter applies to the private or commercial use of explosives by persons engaged in farming, ranching, logging, geophysical work, drilling or development of water, oil, or gas wells, or mining of any kind or to the private use of explosives in the removal of stumps and rocks from land owned by the person using the explosives, except that the persons exempted from this chapter by this subsection must comply with rules adopted under 37-72-201(1)(c) and the provisions of 37-72-102 apply to a violation of those rules by an exempted person.

(4) This chapter does not apply to persons conducting blasting operations when the persons and operations are subject to rules adopted under and implementing 82-4-231(3)(e).

History: **En. Sec. 1, Ch. 402, L. 1985.**

Compiler's Comments

References to Repealed Section: The cite to 50-38-101 in (2)(d) and (2)(e) was bracketed by the Code Commissioner because 50-38-101 was repealed by Ch. 187, L. 1985. Chapter 187, L. 1985, gave the State Fire Marshal the authority to adopt rules relating to explosives in 50-3-102(3). For a definition of "explosives" amended to conform to the repeal and subsequent grant of rulemaking authority, see 45-8-332.

37-72-102. Penalty — injunction. (1) A person convicted of violating ny provision of this chapter or the rules of the division is guilty of a misdeneanor and shall be imprisoned in the county jail for a term not to exceed months or fined an amount not to exceed $500, or both.

(2) The district court may enjoin any violation or threatened violation of he requirements of 37-72-101, 37-72-201, 37-72-202, or 37-72-301 through 7-72-307 or the rules of the division as a nuisance per se; and the division, he attorney general, or any county attorney may institute proceedings for an njunction.

History: **En. Sec. 12, Ch. 402, L. 1985.**

Part 2

Regulation by Workers' Compensation Division

37-72-201. Rules for use of explosives — variances. (1) The diviion shall adopt rules governing the use of explosives in construction blasting. he rules must include provisions to:

(a) regulate the method of withdrawal of explosives from the construction nagazine in which they are kept;

(b) prevent the accidental detonation of explosives;

(c) prevent injury from blasting to persons and property near blast sites;

(d) provide for notification of blasting to the owners or operators of gas nd electric utilities; and

(e) regulate the drilling of holes for explosives and the loading and firing f explosives.

(2) The division shall adopt rules providing for variances from the rules equired by subsection (1). Variances may be granted by the division on a ase-by-case basis for the purpose of individual construction blasting operaions only if it is shown by the affidavit of a construction blaster licensed nder this chapter that:

(a) compliance with the rule for which a variance is sought would be mpracticable; and

(b) the proposed variance from division rules will not constitute a danger o property or public safety.

History: **En. Sec. 9, Ch. 402, L. 1985.**

37-72-202. General rulemaking power. The division shall adopt rules o:

(1) implement the training and experience requirements of 37-72-302;

(2) prescribe the amount of the fees provided for in 37-72-301 and 7-72-303 through 37-72-306, which must be nonrefundable, in an amount ommensurate with the cost of administering this chapter, and deposited in he state special revenue fund for the use of the division;

(3) regulate the use of explosives and grant variances under the provisions f 37-72-201, except that, unless the division is making an investigation under 7-72-203(2), the division does not have the power under this chapter to make nspections into construction blasting and may not adopt rules providing for uch inspections or for inspectors to carry out such inspections;

(4) provide for the form of the license and pocket card provided for in 37-72-307; and

(5) provide for the conduct of the business of the division under this chapter and govern its proceedings under 37-72-203.

History: En. Sec. 10, Ch. 402, L. 1985.

37-72-203. Revocation, suspension, or refusal to renew license — grounds — procedure. (1) The division may reprimand or revoke, suspend, or refuse to renew the license of a person found guilty of:

(a) fraud or deceit in obtaining a license;

(b) gross negligence, incompetency, or misconduct in the practice of construction blasting;

(c) a felony involving the use of explosives; or

(d) violation of the rules of the division.

(2) A person may make charges under subsection (1) against a licensee. The charges must be made by affidavit, subscribed and sworn to by the person making them, and filed with the division. The charges must be investigated by the division. Unless the division, after investigation, dismisses the charges as unfounded or trivial, it shall within 6 months after the date on which the charges were made give notice by mail to the licensee of its intent to reprimand him or to revoke, suspend, or refuse to renew his license. The notice must contain those matters required by the Montana Administrative Procedure Act.

(3) The division may require a licensee to take a written or oral examination, or both, in a proceeding to reprimand or to revoke, suspend, or refuse to renew a license.

History: En. Sec. 11, Ch. 402, L. 1985.

Part 3

Licensing

37-72-301. General qualifications. A person making initial application to the division for a license as a construction blaster shall:

(1) pay an application fee to the division; and

(2) furnish proof under oath, on a form provided by the division, that he:

(a) is at least 18 years old;

(b) is of good moral character;

(c) has not been convicted of a felony or misdemeanor involving the use of explosives;

(d) is not addicted to narcotic drugs or intemperate in the use of alcohol; and

(e) has satisfied the requirements for training and experience in construction blasting established by 37-72-302 and the rules of the division.

History: En. Sec. 2, Ch. 402, L. 1985.

37-72-302. Training and experience requirements. (1) A person applying for licensure as a construction blaster shall furnish proof, under oath, on a form provided by the division, that he has:

(a) successfully completed a training program in construction blasting that has been recognized by the explosives or construction industry and approved by the division; and

(b) at least 1 year of posttraining experience in construction blasting and because of that experience is familiar with the practical aspects of construction blasting.

(2) No training program may be approved by the division that does not offer comprehensive instruction in types of explosives, methods and purposes of their use, and safety and storage. The division shall by rule adopt a list of approved training programs.

History: En. Sec. 3, Ch. 402, L. 1985.

37-72-303. Licensure by examination — fee. (1) The division shall, at least once a year, administer an examination to applicants meeting the requirements of 37-72-301 and 37-72-302 and the rules adopted by the division. The division shall determine the subjects, scope, and acceptable level of performance for all examinations. The examination may be written, oral, or both. The examination shall at a minimum test the applicant's knowledge of the rules of the division governing construction blasting.

(2) An applicant for licensure by examination shall pay an examination fee to the division.

(3) An applicant for a license who has previously taken and failed the examination required by this section may retake it at any time within 2 years without again furnishing proof of compliance with 37-72-302, upon payment to the division of a reexamination fee.

History: En. Sec. 4, Ch. 402, L. 1985.

37-72-304. Issuance of license — fee. Upon receipt of a license fee, the division shall issue a license to each person who meets the requirements for licensure as prescribed in this chapter. The license must include the dates of issuance and expiration and a serial number. It must be signed by the administrator of the division.

History: En. Sec. 5, Ch. 402, L. 1985.

37-72-305. Licensure of persons licensed by other jurisdictions. Upon receipt of a license fee, the division shall issue a license to any person fulfilling the requirements of 37-72-301(2)(a) through (2)(d) who holds a certificate, license, or permit, issued by another state or any agency of the United States, allowing him to supervise or engage in the practice of construction blasting if the division finds that the certificate, license, or permit was issued upon the satisfactory completion of requirements substantially equivalent to the requirements of 37-72-301 through 37-72-303.

History: En. Sec. 6, Ch. 402, L. 1985.

37-72-306. Annual renewal. (1) A license issued under this chapter expires January 1 following the date of its issuance or renewal and is invalid thereafter. The division shall notify each person licensed under this chapter of the date of the expiration of his license and the amount of his renewal fee. The notice must be mailed to each licensed construction blaster at his listed address at least 1 month before the expiration of his license.

(2) Renewal may be made by application during the 60 days prior to the expiration date. Failure on the part of a licensee to pay his renewal fee by the expiration date does not deprive him of the right to renew his license, but the fee must be increased 10% for each month or major portion thereof that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal may not exceed twice the normal renewal fee. Application for renewal following a lapse of 1 year or more is subject to review by the division, and the applicant may be required to successfully complete an examination.

History: En. Sec. 7, Ch. 402, L. 1985.

37-72-307. License — form — pocket card. (1) The division shall prescribe the form of license.

(2) The division shall annually prepare and deliver a pocket card certifying that the person whose name appears on the card is a licensed construction blaster and stating the period for which fees have been paid.

History: En. Sec. 8, Ch. 402, L. 1985.

TITLE 38

RESERVED

TITLE 39

LABOR

Ch.
1. Department of Labor and Industry.
2. The Employment Relationship.
3. Wages and Wage Protection.
4. Hours of Labor in Certain Employments.
5. The Employment Agency Act.
6. Apprenticeship.
7. Women in Employment — Displaced Homemakers.
Chapters 8 through 29 reserved.
30. Veterans' and Handicapped Persons' Public Employment Preference.
31. Collective Bargaining for Public Employees.
32. Collective Bargaining for Nurses.
33. General Limitations on Collective Bargaining Rights.
34. Arbitration for Firefighters.
Chapters 35 through 50 reserved.
51. Unemployment Insurance.
Chapters 52 through 70 reserved.
71. Workers' Compensation.
72. Occupational Disease Act of Montana.
73. Silicosis Benefits.

CHAPTER 1

DEPARTMENT OF LABOR AND INDUSTRY

Part 1 — General Provisions

Section
39-1-101. Definitions.
39-1-102. Duties of department.
39-1-103. Powers of department.
39-1-104. Cooperation with federal government.

Part 1

General Provisions

39-1-101. Definitions. As used in this chapter, unless the context requires otherwise the following definitions apply:

(1) "Commissioner" means the commissioner of labor and industry as provided for in 2-15-1701.

(2) "Department" means the department of labor and industry as provided for in 2-15-1701.

History: En. 39-1-101 by Sec. 1, Ch. 397, L. 1979.

39-1-102. Duties of department. The department shall enforce all the laws of Montana relating to hours of labor, conditions of labor, prosecution of employers who default in payment of wages, protection of employees, and all laws relating to child labor which regulate the employment of children in any manner and shall administer the laws of the state relating to free employment offices and all other state labor laws.

History: En. Sec. 5, Ch. 177, L. 1951; amd. Sec. 1, Ch. 451, L. 1975; R.C.M. 1947, 41-1605(1); amd. Sec. 2, Ch. 397, L. 1979.

Cross-References

"Department" defined, 39-1-101.

Youth Conservation Corps within department, 76-21-102.

39-1-103. Powers of department. (1) In discharging the duties imposed upon the department, the commissioner or his authorized representatives may administer oaths, examine witnesses under oath, take depositions or cause same to be taken, deputize any citizen 18 years of age or older to serve subpoenas upon witnesses, and issue subpoenas for the attendance of witnesses before him in the same manner as for attendance before district courts.

(2) The commissioner may likewise cause to be inspected any mine, factory, workshop, smelter, mill, warehouse, elevator, foundry, machine shop, or other industrial establishment.

(3) Nothing herein contained shall in any manner confer upon the commissioner the authority to interfere in any manner with the conduct of the matters under the control of the workers' compensation division, nor shall the commissioner be charged with the duty of enforcing any of the laws of the state pertaining to the affairs of the workers' compensation division or with the enforcement of the safety provisions of the Workers' Compensation Act.

(4) Nothing in this chapter applies to labor violations preempted by federal law or regulation.

History: En. Sec. 5, Ch. 177, L. 1951; amd. Sec. 1, Ch. 451, L. 1975; R.C.M. 1947, 41-1605(2).

Cross-References

Subpoena, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

Workers' Compensation Act, Title 39, ch. 71.

39-1-104. Cooperation with federal government. The department may and is hereby authorized to assist and cooperate with the wage and hour division and the children's bureau, U.S. department of labor, in the enforcement within this state of the Fair Labor Standards Act of 1938, approved June 25, 1938, and, subject to the regulations of the administrator of the wage and hour division or the chief of the children's bureau, as the case may be, and the laws of the state applicable to the receipt and expenditure of moneys, may be reimbursed by said wage and hour division or said children's bureau for the reasonable cost of such assistance and cooperation.

History: En. Sec. 1, Ch. 56, L. 1939; R.C.M. 1947, 41-1137.

CHAPTER 2

THE EMPLOYMENT RELATIONSHIP

Part 1 — General Provisions

Section

39-2-101. Employment defined.
39-2-102. What belongs to employer.

9-2-103. Confidential employment.

Part 2 — General Obligations of Employers

9-2-201. Seats for employees.

Part 3 — General Prohibitions on Employers

9-2-301. Unlawful for employer to require employee to pay cost of medical examination as condition of employment.
9-2-302. Discharge or layoff of employee because of attachment or garnishment prohibited.
9-2-303. Deception as to character of employment, conditions of work, or existence of labor dispute prohibited.
9-2-304. Lie detector tests prohibited — exception.
9-2-305. Employment of aliens not lawfully authorized to accept employment prohibited.
9-2-306. Employment of persons under eighteen as bartenders prohibited.

Part 4 — General Obligations of Employees

9-2-401. Duties of gratuitous employee.
9-2-402. Duties of employee for reward.
9-2-403. Duties of employee for his own benefit.
9-2-404. Employee must obey employer.
9-2-405. Employee must conform to usage.
9-2-406. Degree of skill required.
9-2-407. Duty to account.
9-2-408. Duty of employee regarding items received on account of his employer.
9-2-409. Preference to be given to employer's business.
9-2-410. Responsibility of employee for substitute.
9-2-411. Surviving employee.

Part 5 — Termination of Employment

9-2-501. Termination of employment generally.
9-2-502. Termination by death or incapacity of employer.
9-2-503. Termination at will.
9-2-504. Termination by employer for fault.
9-2-505. Termination by employee for fault.

Part 6 — Master and Servant

9-2-601. Servant defined.
9-2-602. Term of hiring.
9-2-603. Renewal of hiring.
9-2-604. Time of service.
9-2-605. Servant to pay over without demand.
9-2-606. When servant may be discharged.

Part 7 — General Liability Arising From Employment Relationship

9-2-701. Indemnification of employee.
9-2-702. Liability of employee for negligence.
9-2-703. Liability of railway corporation for negligence of fellow servants.
9-2-704. Liability of mining company for negligence of fellow servants.
9-2-705. Contract discharging employer liability for negligence void.

Part 8 — Blacklisting and Protection of Discharged Employees

9-2-801. Employee to be furnished on demand with reason for discharge.
9-2-802. Protection of discharged employees.

39-2-803. Blacklisting prohibited.
39-2-804. Violation of part a misdemeanor.

Chapter Cross-References
Veterans — employment, Title 10, ch. 2, part 2.
Labor disputes — injunctions not allowed, 27-19-103.
Veterans' and handicapped persons' public employment preference, Title 39, ch. 30.
Child labor, Title 41, ch. 2.

Part 1

General Provisions

39-2-101. Employment defined. The contract of employment is a contract by which one, who is called the employer, engages another, who is called the employee, to do something for the benefit of the employer or a third person.

History: En. Sec. 2650, Civ. C. 1895; re-en. Sec. 5241, Rev. C. 1907; re-en. Sec. 7756, R.C.M. 1921; Cal. Civ. C. Sec. 1965; Field Civ. C. Sec. 1004; re-en. Sec. 7756, R.C.M. 1935; R.C.M. 1947, 41-101.

39-2-102. What belongs to employer. Everything which an employee acquires by virtue of his employment, except the compensation, if any, which is due to him from his employer, belongs to the latter, whether acquired lawfully or unlawfully or during or after the expiration of the term of his employment.

History: En. Sec. 2680, Civ. C. 1895; re-en. Sec. 5263, Rev. C. 1907; re-en. Sec. 7778, R.C.M. 1921; Cal. Civ. C. Sec. 1985; Field Civ. C. Sec. 1018; re-en. Sec. 7778, R.C.M. 1935; R.C.M. 1947, 41-211.

Cross-References
"Employment" defined, 39-2-101.

39-2-103. Confidential employment. The obligations peculiar to confidential employments are defined in the laws relating to trusts and fiduciary relationships.

History: En. Sec. 2687, Civ. C. 1895; re-en. Sec. 5270, Rev. C. 1907; re-en. Sec. 7785, R.C.M. 1921; Cal. Civ. C. Sec. 1992; Field Civ. C. Sec. 1025; re-en. Sec. 7785, R.C.M. 1935; R.C.M. 1947, 41-218; amd. Sec. 3, Ch. 397, L. 1979.

Cross-References
Trusts in general, Title 72, ch. 20.
Trustees' Powers Act, Title 72, ch. 21.

Part 2

General Obligations of Employers

39-2-201. Seats for employees. (1) Every employer in any manufacturing, mechanical, or mercantile establishment; laundry, hotel, or restaurant; or other establishment employing any person shall provide suitable seats for all employees and shall permit them to use such seats when they are not employed in the active duties of their employment.

(2) Any employer who shall fail, neglect, or refuse to provide suitable seats, as provided in this section, or who shall permit or suffer any overseer

uperintendent, or other agent of any such employer to violate any of the rovisions of this section shall be guilty of a misdemeanor and upon convic- on thereof shall be fined for each offense not less than $50 or more than 200 or be imprisoned in the county jail for a period of not less than 10 or ore than 60 days or both such fine and imprisonment.

History: (1)En. Sec. 2, Ch. 108, L. 1913; amd. Sec. 2, Ch. 18, L. 1917; re-en. Sec. 2, Ch. 70, . 1917; re-en. Sec. 3077, R.C.M. 1921; re-en. Sec. 3077, R.C.M. 1935; amd. Sec. 22, Ch. 535, . 1975; Sec. 41-1119, R.C.M. 1947; (2)En. Sec. 3, Ch. 108, L. 1913; amd. Sec. 3, Ch. 18, L. 917; re-en. Sec. 3, Ch. 70, L. 1917; re-en. Sec. 3078, R.C.M. 1921; re-en. Sec. 3078, R.C.M. 935; amd. Sec. 1, Ch. 51, L. 1971; Sec. 41-1120, R.C.M. 1947; R.C.M. 1947, 41-1119, 41-1120.

ross-References
"Employment" defined, 39-2-101.
Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.

Part 3

General Prohibitions on Employers

art Cross-References
Employer may not discharge, discipline, or fuse to hire a person because of imposition of come withholding, 40-5-422.

39-2-301. Unlawful for employer to require employee to pay cost f medical examination as condition of employment. (1) It shall be nlawful for any employer to require any employee or applicant for employ- ent to pay the cost of a medical examination or the cost of furnishing any ecords of such examination as a condition of employment.

(2) The term "employer", as used in this section, shall mean and include n individual, a partnership, an association, a corporation, a legal representa- ve, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, otor, water, air, or express company doing business in or operating within e state.

(3) The term "employee", as used in this section, shall mean and include ny person who may be permitted, required, or directed by any employer, as efined in subsection (2) of this section, in consideration of direct or indirect ain or profit to engage in any employment.

(4) Any employer violating the provisions of this section shall be guilty of misdemeanor and upon conviction thereof shall be punished by a fine in ny sum not exceeding $100 for each such offense.

History: En. Secs. 1, 2, 3, 4, Ch. 47, L. 1953; R.C.M. 1947, 41-113, 41-114, 41-115, 41-116.

ross-References
"Employment" defined, 39-2-101.
Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.

39-2-302. Discharge or layoff of employee because of attachment r garnishment prohibited. No employer shall discharge or lay off an mployee because of attachment or garnishment served on the employer gainst the wages of the employee.

History: En. Sec. 1, Ch. 245, L. 1969; R.C.M. 1947, 41-305.1.

39-2-303. Deception as to character of employment, conditions of ork, or existence of labor dispute prohibited. (1) No one doing busi- ess in this state shall induce, influence, persuade, or engage workmen to change from one place to another in this state through or by means of deception, misrepresentation, or false advertising concerning the kind or character of the work, the sanitary or other conditions of employment, or as to the existence of a strike or other trouble pending between the employer and the employees at the time of or immediately prior to such engagement. Failure to state in any advertisement, proposal, or contract for the employment of workmen that there is a strike, lockout, or other labor trouble at the place of the proposed employment when in fact such strike, lockout, or other trouble then actually exists at such place shall be deemed a false advertisement and misrepresentation for the purpose of this section.

(2) Any workman influenced, induced, persuaded, or engaged through or by means of any of the things prohibited by subsection (1) of this section has a right of action for recovery of all damages that he had sustained in consequence of the deception, misrepresentation, or false advertising used to induce him to change his place of employment against anyone directly or indirectly procuring such change, and in addition thereto, he shall recover reasonable attorneys' fees to be fixed by the court and taxed as costs in any judgment recovered.

History: En. 41-118 by Sec. 2, Ch. 513, L. 1973; R.C.M. 1947, 41-118.

Cross-References
Attorneys' fees, Title 25, ch. 10, part 3.
"Employment" defined, 39-2-101.

39-2-304. Lie detector tests prohibited — exception. (1) No person, firm, corporation, or other business entity or representative thereof shall require as a condition for employment or continuation of employment any person to take a polygraph test or any form of a mechanical lie detector test. A person who violates this section is guilty of a misdemeanor.

(2) This section shall not apply to public law enforcement agencies.

History: En. Secs. 1, 2, Ch. 46, L. 1974; R.C.M. 1947, 41-119, 41-120.

Cross-References
"Employment" defined, 39-2-101.
Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.
Penalty for misdemeanor, 46-18-212.

39-2-305. Employment of aliens not lawfully authorized to accept employment prohibited. (1) No employer may knowingly employ an alien who is not lawfully authorized to accept employment.

(2) A person convicted of violating this section shall be fined no more than $300.

(3) The department of labor and industry or a person harmed by a violation of this section may sue to enjoin an employer from violating this section and to gain other appropriate relief.

History: En. 41-121 by Sec. 1, Ch. 56, L. 1977; R.C.M. 1947, 41-121.

Cross-References
Injunctions, Title 27, ch. 19.
"Employment" defined, 39-2-101.
Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.

39-2-306. Employment of persons under eighteen as bartenders prohibited. (1) No person under 18 years of age shall be employed as a bartender, waiter, or waitress whose duty is to serve customers purchasing liquors, beer, or wines in any establishment which sells liquors, beer, or wines at retail.

(2) Any retail vendor of liquors, beer, or wines who employs any such person under the age of 18 years is guilty of a misdemeanor.

History: (1)En. Sec. 1, Ch. 114, L. 1941; amd. Sec. 11, Ch. 240, L. 1971; amd. Sec. 17, Ch. 94, L. 1973; Sec. 41-1135, R.C.M. 1947; (2)En. Sec. 2, Ch. 114, L. 1941; amd. Sec. 12, Ch. 240, L. 1971; amd. Sec. 18, Ch. 94, L. 1973; Sec. 41-1136, R.C.M. 1947; R.C.M. 1947, 41-1135, 41-1136.

Cross-References

Age of majority, Art. II, sec. 14, Mont. Const.

Alcoholic beverages — age restrictions, 16-3-301, 16-6-305.

"Employment" defined, 39-2-101.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Penalty for misdemeanor, 46-18-212.

Part 4

General Obligations of Employees

39-2-401. Duties of gratuitous employee. (1) One who without consideration undertakes to do a service for another is not bound to perform the same, but if he actually enters upon its performance, he must use at least slight care and diligence therein.

(2) One who by his own special request induces another to entrust him with the performance of a service must perform the same fully. In other cases, one who undertakes a gratuitous service may relinquish it at any time.

(3) A gratuitous employee who accepts a written power of attorney must act under it so long as it remains in force or until he gives notice to his employer that he will not do so.

History: (1)En. Sec. 2670, Civ. C. 1895; re-en. Sec. 5253, Rev. C. 1907; re-en. Sec. 7768, R.C.M. 1921; Cal. Civ. C. Sec. 1975; Field Civ. C. Sec. 1008; re-en. Sec. 7768, R.C.M. 1935; Sec. 41-201, R.C.M. 1947; (2)En. Sec. 2671, Civ. C. 1895; re-en. Sec. 5254, Rev. C. 1907; re-en. Sec. 7769, R.C.M. 1921; Cal. Civ. C. Sec. 1976; Field Civ. C. Sec. 1009; re-en. Sec. 7769, R.C.M. 1935; Sec. 41-202, R.C.M. 1947; (3)En. Sec. 2672, Civ. C. 1895; re-en. Sec. 5255, Rev. C. 1907; re-en. Sec. 7770, R.C.M. 1921; Cal. Civ. C. Sec. 1977; Field Civ. C. Sec. 1010; re-en. Sec. 7770, R.C.M. 1935; Sec. 41-203, R.C.M. 1947; R.C.M. 1947, 41-201, 41-202, 41-203.

39-2-402. Duties of employee for reward. One who for a good consideration agrees to serve another must perform the service and must use ordinary care and diligence therein so long as he is thus employed.

History: En. Sec. 2673, Civ. C. 1895; re-en. Sec. 5256, Rev. C. 1907; re-en. Sec. 7771, R.C.M. 1921; Cal. Civ. C. Sec. 1978; Field Civ. C. Sec. 1011; re-en. Sec. 7771, R.C.M. 1935; R.C.M. 1947, 41-204.

39-2-403. Duties of employee for his own benefit. One who is employed at his own request to do that which is more for his own advantage than for that of his employer must use great care and diligence therein to protect the interest of the latter.

History: En. Sec. 2674, Civ. C. 1895; re-en. Sec. 5257, Rev. C. 1907; re-en. Sec. 7772, R.C.M. 1921; Cal. Civ. C. Sec. 1979; Field Civ. C. Sec. 1012; re-en. Sec. 7772, R.C.M. 1935; R.C.M. 1947, 41-205.

39-2-404. Employee must obey employer. An employee must substantially comply with all the directions of his employer concerning the service on which he is engaged, except where such obedience is impossible or unlawful or would impose new and unreasonable burdens upon the employee.

History: En. Sec. 2676, Civ. C. 1895; re-en. Sec. 5259, Rev. C. 1907; re-en. Sec. 7774, R.C.M. 1921; Cal. Civ. C. Sec. 1981; Based on Field Civ. C. Sec. 1014; re-en. Sec. 7774, R.C.M. 1935; R.C.M. 1947, 41-207.

39-2-405. Employee must conform to usage. An employee must perform his service in conformity to the usage of the place of performance unless otherwise directed by his employer or unless it is impracticable or manifestly injurious to his employer to do so.

History: En. Sec. 2677, Civ. C. 1895; re-en. Sec. 5260, Rev. C. 1907; re-en. Sec. 7775, R.C.M. 1921; Cal. Civ. C. Sec. 1982; Field Civ. C. Sec. 1015; re-en. Sec. 7775, R.C.M. 1935; R.C.M. 1947, 41-208.

39-2-406. Degree of skill required. (1) An employee is bound to exercise a reasonable degree of skill unless his employer has notice before employing him of his want of skill.

(2) An employee is always bound to use such skill as he possesses, so far as the same is required, for the service specified.

History: (1)En. Sec. 2678, Civ. C. 1895; re-en. Sec. 5261, Rev. C. 1907; re-en. Sec. 7776, R.C.M. 1921; Cal. Civ. C. Sec. 1983; Field Civ. C. Sec. 1016; re-en. Sec. 7776, R.C.M. 1935; Sec. 41-209, R.C.M. 1947; (2)En. Sec. 2679, Civ. C. 1895; re-en. Sec. 5262, Rev. C. 1907; re-en. Sec. 7777, R.C.M. 1921; Cal. Civ. C. Sec. 1984; Based on Field Civ. C. Sec. 1017; re-en. Sec. 7777, R.C.M. 1935; Sec. 41-210, R.C.M. 1947; R.C.M. 1947, 41-209, 41-210.

39-2-407. Duty to account. An employee must, on demand, render to his employer as often as may be reasonable just accounts of all his transactions in the course of his service and must, without demand, give prompt notice to his employer of everything which he receives for his account.

History: En. Sec. 2681, Civ. C. 1895; re-en. Sec. 5264, Rev. C. 1907; re-en. Sec. 7779, R.C.M. 1921; Cal. Civ. C. Sec. 1986; Field Civ. C. Sec. 1019; re-en. Sec. 7779, R.C.M. 1935; R.C.M. 1947, 41-212.

39-2-408. Duty of employee regarding items received on account of his employer. An employee who receives anything on account of his employer in any capacity other than that of a mere servant is not bound to deliver it to him until demanded and is not at liberty to send it to him from a distance, without demand, in any mode involving greater risk than its retention by the employee himself.

History: En. Sec. 2682, Civ. C. 1895; re-en. Sec. 5265, Rev. C. 1907; re-en. Sec. 7780, R.C.M. 1921; Cal. Civ. C. Sec. 1987; Field Civ. C. Sec. 1020; re-en. Sec. 7780, R.C.M. 1935; R.C.M. 1947, 41-213.

Cross-References

"Servant" defined, 39-2-601.

39-2-409. Preference to be given to employer's business. An employee who has any business to transact on his own account similar to that entrusted to him by his employer must always give the latter the preference.

History: En. Sec. 2683, Civ. C. 1985; re-en. Sec. 5266, Rev. C. 1907; re-en. Sec. 7781, R.C.M. 1921; Cal. Civ. C. Sec. 1988; Based on Field Civ. C. Sec. 1021; re-en. Sec. 7781, R.C.M. 1935; R.C.M. 1947, 41-214.

39-2-410. Responsibility of employee for substitute. An employee who is expressly authorized to employ a substitute is liable to his principal only for want of ordinary care in his selection. The substitute is directly responsible to the principal.

History: En. Sec. 2684, Civ. C. 1895; re-en. Sec. 5267, Rev. C. 1907; re-en. Sec. 7782, R.C.M. 1921; Cal. Civ. C. Sec. 1989; Field Civ. C. Sec. 1022; re-en. Sec. 7782, R.C.M. 1935; R.C.M. 1947, 41-215.

39-2-411. Surviving employee. Where service is to be rendered by two or more persons jointly and one of them dies, the survivor must act alone if he service to be rendered is such as he can rightly perform without the aid of the deceased person, but not otherwise.

History: En. Sec. 2686, Civ. C. 1895; re-en. Sec. 5269, Rev. C. 1907; re-en. Sec. 7784, R.C.M. 921; Cal. Civ. C. Sec. 1991; Field Civ. C. Sec. 1024; re-en. Sec. 7784, R.C.M. 1935; R.C.M. 947, 41-217.

Part 5

Termination of Employment

39-2-501. Termination of employment generally. Every employment s terminated by:

(1) the expiration of its appointed term;

(2) the extinction of its subject;

(3) the death of the employee; or

(4) his legal incapacity to act as such.

History: En. Sec. 2701, Civ. C. 1895; re-en. Sec. 5272, Rev. C. 1907; re-en. Sec. 7787, R.C.M. 921; Cal. Civ. C. Sec. 1997; Field Civ. C. Sec. 1027; re-en. Sec. 7787, R.C.M. 1935; R.C.M. 947, 41-302.

Cross-References

"Employment" defined, 39-2-101.

39-2-502. Termination by death or incapacity of employer. (1) Every employment in which the power of the employee is not coupled with n interest in its subject is terminated by notice to him of:

(a) the death of the employer; or

(b) his legal incapacity to contract.

(2) An employee, unless the term of his service has expired or unless he has a right to discontinue it at any time without notice, must continue his ervice after notice of the death or incapacity of his employer, so far as is necessary to protect from serious injury the interests of the employer's succesor in interest, until a reasonable time after notice of the facts has been communicated to such successor. The successor must compensate the employee or such service according to the terms of the contract of employment.

History: (1)En. Sec. 2700, Civ. C. 1895; re-en. Sec. 5271, Rev. C. 1907; re-en. Sec. 7786, R.C.M. 1921; Cal. Civ. C. Sec. 1996; Field Civ. C. Sec. 1026; re-en. Sec. 7786, R.C.M. 1935; Sec. 1-301, R.C.M. 1947; (2)En. Sec. 2702, Civ. C. 1895; re-en. Sec. 5273, Rev. C. 1907; re-en. Sec. 788, R.C.M. 1921; Cal. Civ. C. Sec. 1998; Field Civ. C. Sec. 1028; re-en. Sec. 7788, R.C.M. 935; Sec. 41-303, R.C.M. 1947; R.C.M. 1947, 41-301, 41-303.

Cross-References

"Employment" defined, 39-2-101.

39-2-503. Termination at will. An employment having no specified erm may be terminated at the will of either party on notice to the other, xcept where otherwise provided by this chapter, 28-10-301 through 8-10-303, 28-10-502, 30-11-601 through 30-11-605, and 39-2-302.

History: En. Sec. 2703, Civ. C. 1895; re-en. Sec. 5274, Rev. C. 1907; re-en. Sec. 7789, R.C.M. 921; Cal. Civ. C. Sec. 1999; Field Civ. C. Sec. 1029; re-en. Sec. 7789, R.C.M. 1935; amd. Sec. , Ch. 245, L. 1969; R.C.M. 1947, 41-304; amd. Sec. 4, Ch. 397, L. 1979.

Cross-References

"Employment" defined, 39-2-101.

39-2-504. Termination by employer for fault. An employment, even for a specified term, may be terminated at any time by the employer in case of any willful breach of duty by the employee in the course of his employment or in case of his habitual neglect of his duty or continued incapacity to perform it.

History: En. Sec. 2704, Civ. C. 1895; re-en. Sec. 5275, Rev. C. 1907; re-en. Sec. 7790, R.C.M. 1921; Cal. Civ. C. Sec. 2000; Field Civ. C. Sec. 1030; re-en. Sec. 7790, R.C.M. 1935; R.C.M. 1947, 41-305.

Cross-References

"Employment" defined, 39-2-101.

39-2-505. Termination by employee for fault. An employment, even for a specified term, may be terminated by the employee at any time in case of any willful or permanent breach of the obligations of his employer to him as an employee.

History: En. Sec. 2705, Civ. C. 1895; re-en. Sec. 5276, Rev. C. 1907; re-en. Sec. 7791, R.C.M. 1921; Cal. Civ. C. Sec. 2001; Based on Field Civ. C. Sec. 1031; re-en. Sec. 7791, R.C.M. 1935; R.C.M. 1947, 41-306.

Cross-References

"Employment" defined, 39-2-101.

Part 6

Master and Servant

39-2-601. Servant defined. A servant is one who is employed to render personal service to his employer otherwise than in the pursuit of an independent calling and who in such service remains entirely under the control and direction of the latter, who is called his master.

History: En. Sec. 2720, Civ. C. 1895; re-en. Sec. 5279, Rev. C. 1907; re-en. Sec. 7794, R.C.M. 1921; Cal. Civ. C. Sec. 2009; Field Civ. C. Sec. 1034; re-en. Sec. 7794, R.C.M. 1395; R.C.M. 1947, 41-401.

39-2-602. Term of hiring. (1) A servant is presumed to have been hired for such length of time as the parties adopt for the estimation of wages. A hiring at a yearly rate is presumed to be for 1 year; a hiring at a daily rate, for 1 day; a hiring by piecework, for no specified term.

(2) In the absence of any agreement or custom as to the term of service, the time of payment, or rate or value of wages, a servant is presumed to be hired by the month at a monthly rate of reasonable wages, to be paid when the service is performed.

History: (1)En. Sec. 2721, Civ. C. 1895; re-en. Sec. 5280, Rev. C. 1907; re-en. Sec. 7795, R.C.M. 1921; Cal. Civ. C. Sec. 2010; Field Civ. C. Sec. 1035; re-en. Sec. 7795, R.C.M. 1935; Sec. 41-402, R.C.M. 1947; (2)En. Sec. 2722, Civ. C. 1895; re-en. Sec. 5281, Rev. C. 1907; re-en. Sec. 7796, R.C.M. 1921; Cal. Civ. C. Sec. 2011; Based on Field Civ. C. Sec. 1036; re-en. Sec. 7796, R.C.M. 1935; Sec. 41-403, R.C.M. 1947; R.C.M. 1947, 41-402, 41-403.

Cross-References

"Servant" defined, 39-2-601.

39-2-603. Renewal of hiring. Where, after the expiration of an agreement respecting the wages and the term of service, the parties continue the relation of master and servant, they are presumed to have renewed the agreement for the same wages and term of service.

History: En. Sec. 2723, Civ. C. 1895; re-en. Sec. 5282, Rev. C. 1907; re-en. Sec. 7797, R.C.M. 1921; Cal. Civ. C. Sec. 2012; Field Civ. C. Sec. 1037; re-en. Sec. 7797, R.C.M. 1395; R.C.M. 1947, 41-404.

Cross-References

"Servant" defined, 39-2-601.

39-2-604. Time of service. The entire time of a domestic servant belongs to the master, and the time of other servants to such extent as is usual in the business in which they serve, not exceeding in any case 10 hours in the day.

History: En. Sec. 2724, Civ. C. 1895; re-en. Sec. 5283, Rev. C. 1907; re-en. Sec. 7798, R.C.M. 1921; Cal. Civ. C. Sec. 2013; Field Civ. C. Sec. 1038; re-en. Sec. 7798, R.C.M. 1935; R.C.M. 1947, 41-405.

Cross-References

"Servant" defined, 39-2-601.

39-2-605. Servant to pay over without demand. A servant must deliver to his master without demand, as soon as with reasonable diligence he can find him, everything that he receives for his account, but he is not bound without orders from his master to send anything to him through another person.

History: En. Sec. 2725, Civ. C. 1895; re-en. Sec. 5284, Rev. C. 1907; re-en. Sec. 7799, R.C.M. 1921; Cal. Civ. C. Sec. 2014; Field Civ. C. Sec. 1039; re-en. Sec. 7799, R.C.M. 1935; R.C.M. 1947, 41-406.

Cross-References

"Servant" defined, 39-2-601.

39-2-606. When servant may be discharged. A master may discharge any servant, other than an apprentice, whether engaged for a fixed term or not:

(1) if he is guilty of misconduct in the course of his service or of gross immorality, though unconnected with the same; or

(2) if, being employed about the person of his master or in a confidential position, the master discovers that he has been guilty of misconduct before or after the commencement of his service of such a nature that, if the master had known or contemplated it, he would not have so employed him.

History: En. Sec. 2726, Civ. C. 1895; re-en. Sec. 5285, Rev. C. 1907; re-en. Sec. 7800, R.C.M. 1921; Cal. Civ. C. Sec. 2015; Field Civ. C. Sec. 1040; re-en. Sec. 7800, R.C.M. 1935; R.C.M. 1947, 41-407.

Cross-References

"Servant" defined, 39-2-601.

Part 7

General Liability Arising From Employment Relationship

39-2-701. Indemnification of employee. (1) An employer must indemnify his employee, except as prescribed in subsection (2) of this section, for all that he necessarily expends or loses in direct consequence of the discharge of his duties as such or of his obedience to the directions of the employer, even though unlawful, unless the employee at the time of obeying such directions believed them to be unlawful.

(2) An employer is not bound to indemnify his employee for losses suffered by the latter in consequence of the ordinary risks of the business in which he is employed.

(3) An employer must in all cases indemnify his employee for losses caused by the former's want of ordinary care.

History: (1)En. Sec. 2660, Civ. C. 1895; re-en. Sec. 5242, Rev. C. 1907; re-en. Sec. 7757, R.C.M. 1921; Cal. Civ. C. Sec. 1969; Field Civ. C. Sec. 1005; re-en. Sec. 7757, R.C.M. 1935; Sec. 41-102, R.C.M. 1947; (2)En. Sec. 2661, Civ. C. 1895; re-en. Sec. 5243, Rev. C. 1907; re-en. Sec. 7758, R.C.M. 1921; Cal. Civ. C. Sec. 1970; Based on Field Civ. C. Sec. 1006; re-en. Sec. 7758, R.C.M. 1935; Sec. 41-103, R.C.M. 1947; (3)En. Sec. 2662, Civ. C. 1895; re-en. Sec. 5244, Rev. C. 1907; re-en. Sec. 7759, R.C.M. 1921; Cal. Civ. C. Sec. 1971; Field Civ. C. Sec. 1007; re-en. Sec. 7759, R.C.M. 1935; Sec. 41-104, R.C.M. 1947; R.C.M. 1947, 41-102, 41-103, 41-104.

39-2-702. Liability of employee for negligence. An employee who is guilty of a culpable degree of negligence is liable to his employer for the damage thereby caused to the latter, and the employer is liable to him for the value of such services only as are properly rendered if the service is not gratuitous.

History: En. Sec. 2685, Civ. C. 1895; re-en. Sec. 5268, Rev. C. 1907; re-en. Sec. 7783, R.C.M. 1921; Cal. Civ. C. Sec. 1990; Field Civ. C. Sec. 1023; re-en. Sec. 7783, R.C.M. 1935; R.C.M. 1947, 41-216.

39-2-703. Liability of railway corporation for negligence of fellow servants. (1) Every person or corporation operating a railway or railroad in this state is liable for all damages sustained by any employee of such person or corporation in consequence of the neglect of any other employee thereof or by the mismanagement of any other employee thereof and in consequence of the willful wrongs, whether of commission or omission, of any other employee thereof when such neglect, mismanagement, or wrongs are in any manner connected with the use and operation of any railway or railroad on or about which he is employed. No contract which restricts such liability is legal or binding.

(2) In case of the death of any such employee in consequence of any injury or damage so sustained, the right of action provided by subsection (1) shall survive and may be prosecuted and maintained by his heirs or personal representatives.

(3) Every railway corporation doing business in this state, including electric railway corporations, is liable for damages sustained by an employee thereof within this state, subject to the provisions of 27-1-702, when such damages are caused by the negligence of any train dispatcher, telegraph operator, superintendent, master mechanic, yardmaster, conductor, engineer, motorman, or any other employee who has superintendence of any stationary or hand signal.

(4) No contract of insurance, relief, benefit, or indemnity in case of injury or death or any other contract entered into, either before or after the injury, between the person injured and any of the employers named in subsection (3) is a bar or defense to any cause of action brought under the provisions of this section, except as otherwise provided in the Workers' Compensation Act.

History: (1), (2)En. Secs. 1, 2, Ch. 1, L. 1905; re-en. Secs. 5251, 5252, Rev. C. 1907; re-en. Secs. 7766, 7767, R.C.M. 1921; re-en. Secs. 7766, 7767, R.C.M. 1935; Secs. 41-111, 41-112,

R.C.M. 1947; (3), (4)En. Secs. 1, 3, Ch. 83, L. 1903; re-en. Secs. 5245, 5247, Rev. C. 1907; re-en. Secs. 7760, 7762, R.C.M. 1921; re-en. Secs. 7760, 7762, R.C.M. 1935; Secs. 41-105, 41-107, R.C.M. 1947; R.C.M 1947, 41-105, 41-107, 41-111, 41-112; amd. Sec. 5, Ch. 397, L. 1979.

Cross-References

Workers' Compensation Act, Title 39, ch. 71.

Liability for death or injury to railroad employees, 69-14-1006.

39-2-704. Liability of mining company for negligence of fellow servants. (1) Every company, corporation, or individual operating any mine, smelter, or mill for the refining of ores is liable for damages sustained by any employee thereof within this state, subject to the provisions of 27-1-702, when such damage is caused by the negligence of any superintendent, foreman, shift boss, hoisting or other engineer, or craneman.

(2) No contract of insurance, relief, benefit, or indemnity in case of injury or death or any other contract entered into before the injury between the person injured and any of the employers named in this section is a bar or defense to any cause of action brought under the provisions of this section, except as otherwise provided in the Workers' Compensation Act.

(3) In case of the death of any such employee in consequence of any injury or damages so sustained, the right of action survives and may be prosecuted and maintained by his heirs or personal representatives.

History: En. Secs. 1, 2, 3, Ch. 23, L. 1905; re-en. Secs. 5248, 5249, 5250, Rev. C. 1907; re-en. Secs. 7763, 7764, 7765, R.C.M. 1921; re-en. Secs. 7763, 7764, 7765, R.C.M. 1935; R.C.M. 1947, 41-108, 41-109, 41-110; amd. Sec. 6, Ch. 397, L. 1979.

39-2-705. Contract discharging employer liability for negligence void. Any contract or agreement entered into by any person, company, or corporation with its servants or employees whereby such person, company, or corporation shall be released or discharged from liability or responsibility on account of personal injuries received by such servants or employees while in the service of such person, company, or corporation, by reason of the negligence of such person, company, or corporation, or the agents or employees thereof, shall be absolutely null and void.

History: En. Sec. 2242, Civ. C. 1895; re-en. Sec. 5053, Rev. C. 1907; re-en. Sec. 7555, R.C.M. 1921; re-en. Sec. 7555, R.C.M. 1935; R.C.M. 1947, 13-803.

Part 8

Blacklisting and Protection of Discharged Employees

39-2-801. Employee to be furnished on demand with reason for discharge. It is the duty of any person after having discharged any employee from his service, upon demand by such discharged employee, to furnish him in writing a full, succinct, and complete statement of the reason of his discharge and if such person refuses so to do within a reasonable time after such demand, it is unlawful thereafter for such person to furnish any statement of the reason of such discharge to any person or in any way to blacklist or to prevent such discharged person from procuring employment elsewhere, subject to the penalties and damages prescribed in this part.

History: En. Sec. 3, p. 258, L. 1891; amd. Sec. 3392, Pol. C. 1895; re-en. Sec. 1757, Rev. C. 1907; re-en. Sec. 3094, R.C.M. 1921; re-en. Sec. 3094, R.C.M. 1935; R.C.M. 1947, 41-1311.

Cross-References
"Employment" defined, 39-2-101.

39-2-802. Protection of discharged employees. If any person, after having discharged an employee from his service, prevents or attempts to prevent by word or writing of any kind such discharged employee from obtaining employment with any other person, such person is punishable as provided in 39-2-804 and is liable in punitive damages to such discharged person, to be recovered by civil action. No person is prohibited from informing by word or writing any person to whom such discharged person or employee has applied for employment a truthful statement of the reason for such discharge.

History: En. Sec. 1, p. 257, L. 1891; amd. Sec. 3390, Pol. C. 1895; re-en. Sec. 1755, Rev. C. 1907; re-en. Sec. 3092, R.C.M. 1921; re-en. Sec. 3092, R.C.M. 1935; R.C.M. 1947, 41-1309.

Cross-References
"Employment" defined, 39-2-101.

39-2-803. Blacklisting prohibited. If any company or corporation in this state authorizes or allows any of its agents to blacklist or any person does blacklist any discharged employee or attempts by word or writing or any other means whatever to prevent any discharged employee or any employee who may have voluntarily left the company's service from obtaining employment with another person, except as provided for in 39-2-802, such company or corporation or person is liable in punitive damages to such employee so prevented from obtaining employment, to be recovered by him in a civil action, and is also punishable as provided in 39-2-804.

History: En. Sec. 2, p. 258, L. 1891; amd. Sec. 3391, Pol. C. 1895; re-en. Sec. 1756, Rev. C. 1907; re-en. Sec. 3093, R.C.M. 1921; re-en. Sec. 3093, R.C.M. 1935; R.C.M. 1947, 41-1310; amd. Sec. 7, Ch. 397, L. 1979.

Cross-References
"Employment" defined, 39-2-101.

39-2-804. Violation of part a misdemeanor. Every person who violates any of the provisions of this part relating to the protection of discharged employees and the prevention of blacklisting is guilty of a misdemeanor.

History: En. Sec. 656, Pen. C. 1895; re-en. Sec. 8467, Rev. C. 1907; re-en. Sec. 11219, R.C.M. 1921; re-en. Sec. 11219, R.C.M. 1935; Sec. 94-3555, R.C.M. 1947; redes. 41-1325 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 41-1325.

Cross-References
Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.
Penalty for misdemeanor, 46-18-212.

CHAPTER 3

WAGES AND WAGE PROTECTION

Part 1 — General Provisions

Section
39-3-101. Employer to furnish itemized statement of deductions.
39-3-102. Compensation of employee dismissed for cause.
39-3-103. Compensation of employee leaving for cause.
39-3-104. Equal pay for women for equivalent service.

Part 2 — Payment of Wages

39-3-201. Definitions.
39-3-202. Rulemaking power of commissioner.
39-3-203. Employer to notify employee on written demand as to rate of wages and date of paydays.
39-3-204. Payment of wages generally.
39-3-205. Payment of wages when employee separated from employment prior to payday.
39-3-206. Penalty for failure to pay wages at times specified in law.
39-3-207. Period within which employee may recover penalties.
39-3-208. Contracts in violation of part void.
39-3-209. Commissioner of labor to investigate violations and institute actions for unpaid wages.
39-3-210. Investigative powers of commissioner.
39-3-211. Commissioner to take wage assignments.
39-3-212. Court enforcement of commissioner's determination.
39-3-213. Disposition of wages.
39-3-214. Court costs and attorneys' fees.
39-3-215. Authority of county attorney.

Part 3 — Reciprocal Agreement for Collection of Wages Act

39-3-301. Short title.
39-3-302. Purpose.
39-3-303. Reciprocal agreements for collection of wages.
39-3-304. Actions in other states for collections of claims — assignments for collection.
39-3-305. Claims assigned by other states — actions — collection.
39-3-306. Limitations.

Part 4 — Minimum Wage and Overtime Compensation

39-3-401. Declaration of policy.
39-3-402. Definitions.
39-3-403. Regulations.
39-3-404. Minimum wage.
39-3-405. Overtime compensation.
39-3-406. Exclusions.
39-3-407. Enforcement.
39-3-408. Provisions cumulative.

Part 5 — Wage Protection for Certain Employees of Mineral and Oil Industry

39-3-501. Certain laws extended to certain employers in mineral and oil industry.
39-3-502. Operator to file statement — penalty for failure to file.
39-3-503. Report of violations to county attorney by commissioner.
39-3-504. Report of violations directly to county attorney by employee.
39-3-505. County attorney to notify commissioner of violation reported directly by employee.
39-3-506. County attorney to file complaint in district court on belief of violation.
39-3-507. Prayer for relief.
39-3-508. Summons — service of process.
39-3-509. Hearing on complaint — court order to pay wages due or appear and show cause why bond should not be required.
39-3-510. Show-cause hearing — restraining order until bond furnished.
39-3-511. Bond requirements.
39-3-512. Enjoining further operations in event bond not filed.
39-3-513. Costs of proceeding.
39-3-514. Punishment of employer for contempt.
39-3-515. Publication of notice of court order.
39-3-516. Review of court order by supreme court.
39-3-517. Suit on bond.
39-3-518. Attorney's fee for suit on bond.
39-3-519. Clarification as to construction and applicability of part.
39-3-520. Remedy cumulative.

Part 6 — Restaurant, Bar, and Tavern Wage Protection Act

39-3-601. Short title.
39-3-602. Purpose.
39-3-603. Definitions.
39-3-604. Bond to be filed — bond requirements.
39-3-605. Waiver of bond — new or additional bond.
39-3-606. Power of commissioner to discharge existing sureties and require others.
39-3-607. Enjoining business until bond filed.
39-3-608. Unlawful to operate business without bond.

Part 7 — Contractors' Bonds for Wages and Benefits

39-3-701. Definitions.
39-3-702. Rules.
39-3-703. Contractor to furnish bond for wages and fringe benefits — bond requirements.
39-3-704. Exception.
39-3-705. Suit on bond.
39-3-706. Liability of person contracting with contractor for failure to require bond.

Part 1

General Provisions

39-3-101. Employer to furnish itemized statement of deductions. (1) All employers in this state when making payment to employees for salaries or wages shall, upon making such payment, give to the employee an itemized statement setting forth moneys deducted because of state and federal income taxes, social security, or any other deductions together with the amount of each deduction.

(2) Where no deduction is made in such payment of wages or salaries, the employer shall give to the employee a statement that the payment does not include any such deductions.

History: En. Sec. 1, Ch. 159, L. 1957; R.C.M. 1947, 41-117.

39-3-102. Compensation of employee dismissed for cause. An employee dismissed by his employer for good cause is not entitled to any compensation for services rendered since the last day upon which a payment became due to him under the contract.

History: En. Sec. 2706, Civ. C. 1895; re-en. Sec. 5277, Rev. C. 1907; re-en. Sec. 7792, R.C.M. 1921; Cal. Civ. C. Sec. 2002; Field Civ. C. Sec. 1032; re-en. Sec. 7792, R.C.M. 1935; R.C.M. 1947, 41-307.

39-3-103. Compensation of employee leaving for cause. An employee who quits the service of his employer for good cause is entitled to such proportion of the compensation which would become due in case of full performance as the services which he has already rendered bear to the services which he was to render as full performance.

History: En. Sec. 2707, Civ. C. 1895; re-en. Sec. 5278, Rev. C. 1907; re-en. Sec. 7793, R.C.M. 1921; Cal. Civ. C. Sec. 2003; Field Civ. C. Sec. 1033; re-en. Sec. 7793, R.C.M. 1935; R.C.M. 1947, 41-308.

39-3-104. Equal pay for women for equivalent service. (1) It is unlawful for the state or any county, municipal entity, school district, public or private corporation, person, or firm to employ women in any occupation within the state for compensation less than that paid to men for equivalent service or for the same amount or class of work or labor in the same industry, school, establishment, office, or place of employment of any kind or description.

(2) If the state or any county, municipal entity, school district, public or private corporation, person, or firm violates any of the provisions of subsection (1), it is guilty of a misdemeanor and upon conviction thereof shall be fined not less than $25 or more than $500 for each offense.

History: En. Secs. 1, 2, Ch. 147, L. 1919; re-en. Secs. 3090, 3091, R.C.M. 1921; re-en. Secs. 3090, 3091, R.C.M. 1935; R.C.M. 1947, 41-1307, 41-1308; amd. Sec. 8, Ch. 397, L. 1979.

Cross-References

Individual dignity, Art. II, sec. 4, Mont. Const.

Equal pay for comparable worth jobs, 2-18-208, 2-18-209.

Women in employment, Title 39, ch. 7.

Illegal discrimination, Title 49, ch. 2.

Part 2

Payment of Wages

39-3-201. Definitions. The following are the definitions used for the purpose of this part:

(1) "Commissioner of labor" refers to the director, commissioner, or chief of the labor department as such department is defined by law or any person or persons designated by him for the purpose of this part.

(2) "Employ" means permit or suffer to work.

(3) "Employee" includes any person who works for another for hire.

(4) "Employer" includes any individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States.

(5) "Wages" includes any money due an employee from the employer or employers, whether to be paid by the hour, day, week, semimonthly, monthly, or yearly and shall include bonus, piecework, tips, and gratuities of any kind.

History: En. Sec. 1, Ch. 11, L. 1919; re-en. Sec. 3084, R.C.M. 1921; re-en. Sec. 3084, R.C.M. 1935; amd. Sec. 1, Ch. 169, L. 1941; amd. Sec. 1, Ch. 64, L. 1975; R.C.M. 1947, 41-1301(3).

39-3-202. Rulemaking power of commissioner. The commissioner is authorized to issue, amend, and enforce rules for the purpose of carrying out the provisions of this part.

History: En. Sec. 4, Ch. 40, L. 1967; R.C.M. 1947, 41-1314.2(part); amd. Sec. 9, Ch. 397, L. 1979.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

"Commissioner of Labor" defined, 39-3-201.

39-3-203. Employer to notify employee on written demand as to rate of wages and date of paydays. (1) Each employer or an authorized representative of the employer shall, on written demand, prior to the commencing of work, notify each employee as to the rate of wages to be paid, whether by the hour, day, week, month, or year, and date of paydays. Such notification must be in writing to each employee or by posting of notice in a conspicuous place.

(2) The provisions of this section do not apply to an employer who has entered into a signed collective bargaining agreement, when such agreement contains conditions of employment, wages to be received, and hours to be worked, or to employers engaged in agriculture or stockraising; provided, however, such employers shall comply with the provisions of 39-3-205.

History: En. Sec. 1, Ch. 11, L. 1919; re-en. Sec. 3084, R.C.M. 1921; re-en. Sec. 3084, R.C.M. 1935; amd. Sec. 1, Ch. 169, L. 1941; amd. Sec. 1, Ch. 64, L. 1975; R.C.M. 1947, 41-1301(1); amd. Sec. 10, Ch. 397, L. 1979.

Cross-References
"Employee" defined, 39-3-201.
"Employer" defined, 39-3-201.
"Wages" defined, 39-3-201.

39-3-204. Payment of wages generally. (1) Every employer of labor in the state of Montana shall pay to each employee the wages earned by such employee in lawful money of the United States or checks on banks convertible into cash on demand at the full face value thereof, and no person for whom labor has been performed may withhold from any employee any wages earned or unpaid for a longer period than 10 business days after the same are due and payable. However, reasonable deductions may be made for board, room, and other incidentals supplied by the employer, whenever such deductions are a part of the conditions of employment, or other deductions provided for by law.

(2) If at such time of payment of wages any employee is absent from the regular place of labor, he is entitled to such payment at any time thereafter.

(3) Provisions of this section do not apply to any professional, supervisory, or technical employee who by custom receives his wages earned at least once monthly.

History: En. Sec. 1, Ch. 11, L. 1919; re-en. Sec. 3084, R.C.M. 1921; re-en. Sec. 3084, R.C.M 1935; amd. Sec. 1, Ch. 169, L. 1941; amd. Sec. 1, Ch. 64, L. 1975; R.C.M. 1947, 41-1301(2); amd. Sec. 11, Ch. 397, L. 1979.

Cross-References
"Employee" defined, 39-3-201.
"Employer" defined, 39-3-201.
"Wages" defined, 39-3-201.
Wages of minors, 40-6-236.

39-3-205. Payment of wages when employee separated from employment prior to payday. (1) Except as provided in subsection (2), whenever any employee is separated from the employ of any employer, all the unpaid wages of such employee shall become due and payable within 3 days, except for employees of the state of Montana and its political subdivisions who would be paid on the next regular payday for the pay period during which the employee was separated from employment or 15 days from the date of separation from employment, whichever occurs first, either through the regular pay channels or by mail if requested by the employee. However, where an employer's payroll checks originate at an office outside the state, the time provided herein for payment of wages shall be extended for 3 additional days.

(2) When an employee is separated for cause from employment by the employer, all the unpaid wages of the employee shall become due and payable immediately upon such separation.

History: En. Sec. 3, Ch. 11, L. 1919; amd. Sec. 1, Ch. 66, L. 1921; re-en. Sec. 3086, R.C.M. 1921; re-en. Sec. 3086, R.C.M. 1935; amd. Sec. 3, Ch. 169, L. 1941; amd. Sec. 2, Ch. 40, L. 1967; R.C.M. 1947, 41-1303; amd. Sec. 1, Ch. 492, L. 1979.

Cross-References

"Employ" defined, 39-3-201.

"Employee" defined, 39-3-201.

"Employer" defined, 39-3-201.

"Wages" defined, 39-3-201.

39-3-206. Penalty for failure to pay wages at times specified in law. Any employer, as such employer is defined in this part, who fails to pay any of his employees as provided in this part or violates any other provision of this part shall be guilty of a misdemeanor. A penalty shall also be assessed against and paid by such employer and become due such employee as follows: a sum equivalent to the fixed amount of 5% of the wages due and unpaid shall be assessed for each day, except Sundays and legal holidays, upon which such failure continues after the day upon which such wages were due, except that such failure shall not be deemed to continue more than 20 days after the date such wages were due.

History: En. Sec. 2, Ch. 11, L. 1919; re-en. Sec. 3085, R.C.M. 1921; re-en. Sec. 3085, R.C.M. 1935; amd. Sec. 2, Ch. 169, L. 1941; amd. Sec. 1, Ch. 40, L. 1967; R.C.M. 1947, 41-1302(part).

Cross-References

"Employee" defined, 39-3-201.

"Employer" defined, 39-3-201.

"Wages" defined, 39-3-201.

39-3-207. Period within which employee may recover penalties. Any employee may recover all such penalties as are provided for the violation of 39-3-206 which have accrued to him at any time within 18 months succeeding such default or delay in the payment of such wages.

History: En. Sec. 4, Ch. 11, L. 1919; re-en. Sec. 3087, R.C.M. 1921; re-en. Sec. 3087, R.C.M. 1935; amd. Sec. 1, Ch. 234, L. 1973; R.C.M. 1947, 41-1304.

Cross-References

"Employee" defined, 39-3-201.

"Wages" defined, 39-3-201.

39-3-208. Contracts in violation of part void. Any contract or agreement made between any person, partnership, or corporation and any party in his or its employ the provisions of which violate, evade, or circumvent this part is unlawful and void, but such employee may sue to recover his wages earned, together with the 5% penalty specified in 39-3-206 or separately to recover the penalty if the wages have been paid.

History: En. Sec. 5, Ch. 11, L. 1919; re-en. Sec. 3088, R.C.M. 1921; re-en. Sec. 3088, R.C.M. 1935; R.C.M. 1947, 41-1305; amd. Sec. 12, Ch. 397, L. 1979.

Cross-References

"Employ" defined, 39-3-201.

"Employee" defined, 39-3-201.

"Wages" defined, 39-3-201.

39-3-209. Commissioner of labor to investigate violations and institute actions for unpaid wages. It shall be the duty of the commissioner of labor to inquire diligently for any violations of this part and to institute actions for the collection of unpaid wages and for the penalties provided for herein in such cases as he may deem proper and to enforce generally the provisions of this part.

History: En. Sec. 2, Ch. 11, L. 1919; re-en. Sec. 3085, R.C.M. 1921; re-en. Sec. 3085, R.C.M. 1935; amd. Sec. 2, Ch. 169, L. 1941; amd. Sec. 1, Ch. 40, L. 1967; R.C.M. 1947, 41-1302(part).

Cross-References

"Commissioner of Labor" defined, 39-3-201.

"Wages" defined, 39-3-201.

39-3-210. Investigative powers of commissioner. (1) The commissioner or his authorized representatives are empowered to enter and inspect such places, question such employees, and investigate such facts, conditions, or matters which they may consider appropriate to determine whether any person has violated any provision of this part or any rule issued hereunder or which may aid in the enforcement of the provisions of this part.

(2) The commissioner or his authorized representatives may administer oaths and examine witnesses under oath; issue subpoenas; compel the attendance of witnesses and the production of papers, books, accounts, records, payrolls, documents, and testimony; and take depositions and affidavits in any proceeding before the commissioner.

History: En. Sec. 3, Ch. 40, L. 1967; R.C.M. 1947, 41-1314.1; amd. Sec. 13, Ch. 397, L. 1979.

Cross-References

"Employee" defined, 39-3-201.

39-3-211. Commissioner to take wage assignments. Whenever the commissioner determines that one or more employees have claims for unpaid wages, he shall, upon the written request of the employee, take an assignment of the claim in trust for such employee and may maintain any proceeding appropriate to enforce the claim, including liquidated damages pursuant to this part. With the written consent of the assignor, the commissioner may settle or adjust any claim assigned pursuant to this section.

History: En. Sec. 4, Ch. 40, L. 1967; R.C.M. 1947, 41-1314.2(part); amd. Sec. 14, Ch. 397, L. 1979.

Cross-References

"Employee" defined, 39-3-201.

"Wages" defined, 39-3-201.

39-3-212. Court enforcement of commissioner's determination. A determination by the commissioner of labor and industry made after a hearing as provided for in parts 2 and 4 of this chapter may be enforced by application by the commissioner to a district court for an order or judgment enforcing the determination if the time provided to initiate judicial review by the employer has passed. The commissioner shall apply to the district court where the employer has its principal place of business or in the first judicial district of the state. A proceeding under this section is not a review of the validity of the commissioner's determination.

History: En. 41-1314.4 by Sec. 1, Ch. 197, L. 1974; R.C.M. 1947, 41-1314.4.

Cross-References

"Commissioner of Labor" defined, 39-3-201.

"Employer" defined, 39-3-201.

39-3-213. Disposition of wages. (1) The commissioner of labor and industry shall deposit wages collected by him under parts 2 and 4 of this chapter into the agency fund and shall attempt to make payment of wages to the entitled person. Wages deposited into the agency fund are not interest bearing. The payment of wages collected may be made by means of state warrants.

(2) Warrants issued pursuant to subsection (1) which remain unclaimed for more than 1 year from the date of issuance shall be returned to the state auditor for cancellation in accordance with 17-8-303.

History: En. 41-1314.3 by Sec. 1, Ch. 164, L. 1974; R.C.M. 1947, 41-1314.3; amd. Sec. 1, Ch. 53, L. 1979.

Cross-References

"Commissioner of Labor" defined, 39-3-201.

"Wages" defined, 39-3-201.

39-3-214. Court costs and attorneys' fees. (1) Whenever it is necessary for the employee to enter or maintain a suit at law for the recovery or collection of wages due as provided for by this part, a resulting judgment must include a reasonable attorney's fee in favor of the successful party, to be taxed as part of the costs in the case.

(2) Any judgment for the plaintiff in a proceeding pursuant to this part must include all costs reasonably incurred in connection with the proceeding, including attorneys' fees.

(3) If the proceeding is maintained by the commissioner, no court costs or fees are required of him nor is he required to furnish any bond or other security that might otherwise be required in connection with any phase of the proceeding.

History: **(1)En. Sec. 6, Ch. 11, L. 1919; re-en. Sec. 3089, R.C.M. 1921; re-en. Sec. 3089, R.C.M. 1935; Sec. 41-1306, R.C.M. 1947; (2), (3)En. Sec. 4, Ch. 40, L. 1967; Sec. 41-1314.2, R.C.M. 1947; R.C.M. 1947, 41-1306, 41-1314.2(part); amd. Sec. 15, Ch. 397, L. 1979.**

Cross-References

"Employee" defined, 39-3-201.

"Wages" defined, 39-3-201.

39-3-215. Authority of county attorney. Nothing herein contained shall be construed to limit the authority of the county attorney of any county of the state to prosecute actions, both civil and criminal, for such violations of this part as may come to his knowledge or to enforce the provisions hereof independently and without specific direction of the commissioner of labor.

History: **En. Sec. 2, Ch. 11, L. 1919; re-en. Sec. 3085, R.C.M. 1921; re-en. Sec. 3085, R.C.M. 1935; amd. Sec. 2, Ch. 169, L. 1941; amd. Sec. 1, Ch. 40, L. 1967; R.C.M. 1947, 41-1302(part).**

Cross-References

County Attorney — duties generally, Title 7, ch. 4, part 27.

"Commissioner of Labor" defined, 39-3-201.

Part 3

Reciprocal Agreement for Collection of Wages Act

39-3-301. Short title. This part may be cited as "The Reciprocal Agreement for Collection of Wages Act of 1977".

History: **En. 41-1326 by Sec. 1, Ch. 216, L. 1977; R.C.M. 1947, 41-1326.**

39-3-302. Purpose. The purpose of this part is to provide for a method of reciprocal enforcement in other states of Montana's wage payment laws contained in part 2 of this chapter and to provide for reciprocal enforcement in Montana of similar wage payment laws of other states.

History: **En. 41-1327 by Sec. 2, Ch. 216, L. 1977; R.C.M. 1947, 41-1327.**

39-3-303. Reciprocal agreements for collection of wages. The department of labor and industry may enter into reciprocal agreements with the labor department or corresponding agency of another state or with the person, board, officer, or commission authorized to act for and on behalf of the department or agency for the collection in the other state of claims or judgments for wages and other demands based upon claims previously assigned to the department of labor and industry.

History: **En. 41-1328 by Sec. 3, Ch. 216, L. 1977; R.C.M. 1947, 41-1328.**

39-3-304. Actions in other states for collections of claims — assignments for collection. The department of labor and industry may, to the extent provided by a reciprocal agreement entered into pursuant to 39-3-303 or by the laws of another state, maintain actions in the courts of another state for the collection of claims for wages, judgments, and other demands and may assign the claims, judgments, and demands to the labor department or agency of another state for collection to the extent permitted or provided for by the laws of the other state or by reciprocal agreement.

History: En. 41-1329 by Sec. 4, Ch. 216, L. 1977; R.C.M. 1947, 41-1329.

39-3-305. Claims assigned by other states — actions — collection. The department of labor and industry may, upon the written request of the labor department or other corresponding agency of another state or a person, board, officer, or commission of the other state authorized to act for and on behalf of the labor department or corresponding agency, maintain actions in the courts of this state upon assigned claims for wages, judgments, and demands arising in the other state in the same manner and to the same extent that these actions by the department of labor and industry are authorized when arising in this state. However, these actions may be commenced and maintained only in those cases where the other state, by appropriate legislation or by reciprocal agreement, extends a like comity to similar cases arising in this state.

History: En. 41-1330 by Sec. 5, Ch. 216, L. 1977; R.C.M. 1947, 41-1330.

39-3-306. Limitations. Limitations regarding the amount of wages covered by a reciprocal agreement or the time during which the wages are accrued shall be the limitations imposed by the laws of the state originating the action.

History: En. 41-1331 by Sec. 6, Ch. 216, L. 1977; R.C.M. 1947, 41-1331.

Part 4

Minimum Wage and Overtime Compensation

39-3-401. Declaration of policy. It is declared to be the policy of this part to:

(1) establish minimum wage and overtime compensation standards for workers at levels consistent with their health, efficiency, and general well-being;

(2) safeguard existing minimum wage and overtime compensation standards which are adequate to maintain the health, efficiency, and general well-being of workers against the unfair competition of wage and hour standards which do not provide such adequate standards of living; and

(3) sustain purchasing power and increase employment opportunities.

History: En. Sec. 1, Ch. 417, L. 1971; R.C.M. 1947, 41-2301.

39-3-402. Definitions. As used in this part the following definitions apply:

(1) "Commissioner" means the commissioner of labor and industry.

(2) "Employ" means to suffer or permit to work.

(3) "Employee" includes any individual employed by an employer.

(4) "Farm or ranch" shall mean any endeavor primarily engaged in culti- ating the soil or in connection with raising or harvesting any agricultural or orticultural commodity, including the raising, shearing, feeding, caring for, raining, and management of livestock, bees, and poultry and fur-bearing ani- nals and wildlife.

(5) "Farm worker" means any person employed to do any service per- ormed on a farm or ranch.

(6) "Occupation" means any occupation, service, trade, business, industry, r branch or group of industries or employment or class of employment in hich employees are gainfully employed.

(7) "Wage" means compensation due to an employee by reason of his mployment, payable in legal tender of the United States or check on banks onvertible into cash on demand at full face value, subject to such allowance s may be permitted by regulations of the commissioner under 39-3-403. The erm "wage" includes the reasonable cost to the employer of furnishing such mployee with board, lodging, or other facilities, if such board, lodging, or ther facilities are customarily furnished by such employer to his employees; rovided, however, that in no case shall such inclusion exceed an amount qual to 40% of the total wage paid by such employer to such employee.

History: En. Sec. 2, Ch. 417, L. 1971; R.C.M. 1947, 41-2302.

39-3-403. Regulations. The commissioner shall make and revise admin- strative regulations to carry out the purposes of this part. Such regulations hall take effect upon publication by the commissioner. Any person who is ggrieved by an administrative regulation may obtain a hearing before the ommissioner upon filing written protest with the commissioner, who shall hereupon set such matter for hearing in the county of residence of such rotestant within 30 days after receipt of such protest. After such hearing, the ommissioner shall promulgate such further administrative regulations as the vidence produced at said hearing shall justify.

History: En. Sec. 5, Ch. 417, L. 1971; R.C.M. 1947, 41-2305.

ross-References

Adoption and publication of rules, Title 2, ch. , part 3.

"Commissioner" defined, 39-3-402.

39-3-404. Minimum wage. (1) Except as otherwise provided in this art and except for farm workers as provided in subsection (2), every mployer shall pay to each of his employees:

(a) at least $3.05 an hour after September 30, 1985, and before October , 1986;

(b) at least $3.35 an hour on October 1, 1986, and thereafter.

(2) In the case of a farm worker employed for a part of a calendar year hich includes periods requiring working hours in excess of 8 hours per day nd other seasonal periods requiring working hours substantially less than 8 ours per day, the employer may pay the worker at a fixed rate of compensa- ion during the term of employment. The employer may elect to:

(a) keep a record of the total number of hours worked by the worker uring the part of the year during which the worker was employed by him the total wages paid by such employer to such employee for that part of the year during which said employee was employed by him shall not be less than the applicable minimum wage rate multiplied by the total number of hours so worked); or

(b) in lieu of the minimum wage set forth herein, pay the farm worker a wage as herein defined on a monthly basis. This monthly compensation shall constitute a minimum wage and shall not be less than the following rates:

(i) $575 a month for the first year from July 1, 1981;

(ii) $635 a month for the second year from July 1, 1981, and thereafter.

History: En. Sec. 3, Ch. 417, L. 1971; amd. Sec. 1, Ch. 363, L. 1973; amd. Sec. 1, Ch. 421, L. 1975; R.C.M. 1947, 41-2303(a), (c); amd. Sec. 1, Ch. 410, L. 1981; amd. Sec. 1, Ch. 360, L. 1985.

Compiler's Comments

1985 Amendment: In (1) substituted present language for "Except as may otherwise be provided pursuant to this part, every employer shall pay to each of his employees wages at a rate not less than provided in subsections (1)(a) and (1)(b), save and except for farm workers as herein defined:

(a) $2.50 an hour for the first year from July 1, 1981;

(b) $2.75 an hour for the second year from July 1, 1981, and thereafter."

1981 Amendment: Increased minimum wage from $1.80 to $2.50 in subsection (1)(a), from $2.00 to $2.75 in subsection (1)(b), from $420 to $575 in subsection (2)(b)(i), and from $460 to $635 in subsection (2)(b)(ii); changed year from 1975 to 1981 throughout section.

Cross-References

"Employee" defined, 39-3-402.

"Farm worker" defined, 39-3-402.

"Wage" defined, 39-3-402.

Federal minimum wage for Youth Conservation Corps, 76-21-206.

39-3-405. Overtime compensation. (1) No employer shall employ any of his employees for a workweek longer than 40 hours unless such employee receives compensation for his employment in excess of 40 hours in a workweek at a rate of not less than 1 ½ times the hourly wage rate at which he is employed.

(2) No overtime provision shall apply for farm workers.

(3) Employers of students at an amusement or recreational area that operates on a seasonal basis who furnish said students with board, lodging, or other facilities shall not employ said students for a workweek longer than 48 hours, unless such students receive compensation for their employment in excess of 48 hours in a workweek at a rate of not less than 1 ½ times the hourly wage rate at which they are employed.

History: En. Sec. 3, Ch. 417, L. 1971; amd. Sec. 1, Ch. 363, L. 1973; amd. Sec. 1, Ch. 421, L. 1975; R.C.M. 1947, 41-2303(b).

Cross-References

Department of Public Safety — work period in lieu of workweek — overtime compensation, 7-32-115.

"Employ" defined, 39-3-402.

"Employee" defined, 39-3-402.

"Wage" defined, 39-3-402.

39-3-406. Exclusions. (1) The provisions of 39-3-404 and 39-3-405 shall not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores such as babysitting, mowing lawns, cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) any persons not regular employees thereof who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) handicapped workers engaged in work which is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that such exclusion shall not exceed a period of 180 days from their initial date of employment and further provided that during this exclusion period wages paid such learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined and delimited by regulations of the commissioner;

(k) any individual employed by the United States of America.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

(b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) a salesman, partsman, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers;

(e) a salesman primarily engaged in selling trailers, boats, or aircraft if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(f) an employee employed as a driver or driver's helper making local deliveries who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the commissioner finds that such plan has the general purpose and effect of reducing hours worked by such employees to or below the maximum workweek applicable to them under 39-3-405;

(g) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop basis and which are used exclusively for supply and storing of water for agricultural purposes;

(h) an employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee is:

(i) primarily employed during his workweek in agriculture by such farmer; and

(ii) paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(i) an employee of an establishment commonly recognized as a country elevator, including an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed by the establishment;

(j) a driver employed by an employer engaged in the business of operating taxicabs;

(k) an employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in such institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as such employee and his spouse reside in such facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

(l) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight;

(m) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(n) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee where no bargaining unit is recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 ½ times the hourly wage rate for the employee.

(o) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee where no bargaining unit is recognized. Employment in excess of 8 hours per day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 ½ times the hourly wage rate for the employee.

(p) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(q) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(r) an employee of a department of public safety working under a work period established pursuant to 7-32-115.

History: (1)En. Sec. 4, Ch. 417, L. 1971; amd. Sec. 19, Ch. 94, L. 1973; R.C.M. 1947, 41-2304; (2)En. Sec. 1, Ch. 572, L. 1979; amd. Sec. 6, Ch. 603, L. 1981; amd. Sec. 1, Ch. 375, L. 1983; amd. Sec. 3, Ch. 562, L. 1983; amd. Sec. 1, Ch. 640, L. 1983; amd. Sec. 3, Ch. 256, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (2)(r).

1983 Amendments: Chapter 375 inserted (2)(p).

Chapter 562 inserted (2)(q).
Chapter 640 inserted (2)(n) and (2)(o).
1981 Amendment: Added subsection (2)(m).

Cross-References

Labor — hours of employment, Art. XII, sec. 2, Mont. Const.

"Commissioner" defined, 39-3-402.
"Employees" defined, 39-3-402.
"Farm or ranch" defined, 39-3-402.
"Farm worker" defined, 39-3-402.
"Wages" defined, 39-3-402.

39-3-407. Enforcement. Enforcement of this part shall be treated as a wage claim action and shall be pursued in accordance with part 2 of this chapter, as amended. This part may also be enforced in accordance with part 5 of this chapter for the benefit of certain employees in the mineral and oil industry. The commissioner may enforce this part without the necessity of a wage assignment.

History: En. Sec. 6, Ch. 417, L. 1971; amd. Sec. 2, Ch. 363, L. 1973; R.C.M. 1947, 41-2306; amd. Sec. 1, Ch. 49, L. 1979.

39-3-408. Provisions cumulative. The provisions of this part shall be in addition to other provisions now provided by law for the payment and collection of wages and salaries but shall not apply to employees covered by the Fair Labor Standards Act.

History: En. Sec. 7, Ch. 417, L. 1971; amd. Sec. 3, Ch. 363, L. 1973; R.C.M. 1947, 41-2307.

Part 5

Wage Protection for Certain Employees of Mineral and Oil Industry

39-3-501. Certain laws extended to certain employers in mineral and oil industry. For the purposes of this part, all the provisions of part 2 of this chapter extend to and govern every person, firm, partnership, or corporation engaged in the business of extracting or of extracting and refining or reducing metals and minerals or mining for coal or drilling for oil, except such persons, firms, partnerships, or corporations as have a free and unencumbered title to not less than one-half the fee of the property being worked. For this purpose, an outstanding unpaid or unredeemed tax sale certificate is not considered an encumbrance.

History: En. Sec. 1, Ch. 39, L. 1939; R.C.M. 1947, 41-1312; amd. Sec. 16, Ch. 397, L. 1979.

39-3-502. Operator to file statement — penalty for failure to file. (1) Every person, firm, or partnership coming within the provisions of this part shall, before commencing operations, file with the commissioner of labor and industry and also in the office of the county clerk and recorder of each county where such operations are to be carried on a verified statement showing the names and addresses of each party interested therein or, if a corporation, the names and addresses of its officers and directors, the principal place of business of such corporation, and the names and addresses of the person or persons resident of Montana designated as the person or persons upon whom service of process may be made.

(2) Every person, firm, partnership, or corporation failing to file a statement with the commissioner of labor and industry and in the offices of the

county clerk and recorders, as provided in subsection (1), shall be deemed guilty of a misdemeanor and punishable as provided by law.

History: (1)En. Sec. 2, Ch. 39, L. 1939; Sec. 41-1313, R.C.M. 1947; (2)En. Sec. 3, Ch. 39, L. 1939; Sec. 41-1314, R.C.M. 1947; R.C.M. 1947, 41-1313, 41-1314.

39-3-503. Report of violations to county attorney by commissioner. Whenever it shall appear from reliable information satisfactory to the commissioner of labor and industry that any person, firm, partnership, or corporation engaged in the business mentioned in 39-3-501 and not exempt from the effect of this part shall have failed to pay any wages or salaries due his employees as required by part 2 of this chapter, he shall have the right to deliver such information to the county attorney of the county wherein the operations of the employer are being carried on and to request such county attorney to file a complaint in the district court of said county in accordance with the provisions of this part and part 2 of this chapter.

History: En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(1).

39-3-504. Report of violations directly to county attorney by employee. Any employee may make complaint directly to the county attorney relative to any violation of this part or part 2 of this chapter.

History: En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(part); amd. Sec. 17, Ch. 397, L. 1979.

39-3-505. County attorney to notify commissioner of violation reported directly by employee. The county attorney of the county shall promptly notify the commissioner of labor and industry of any complaint made by any employee relative to the violation of any of the provisions of this part or part 2 of this chapter and shall in writing keep the commissioner advised of each step in any proceeding taken by the county attorney thereunder.

History: En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(part); amd. Sec. 18, Ch. 397, L. 1979.

39-3-506. County attorney to file complaint in district court on belief of violation. If a county attorney believes after receiving information that the provisions of this part or part 2 of this chapter have been violated and that such violation was willful or that the financial condition of the employer is such as to endanger employees in receiving prompt payment or collection of wages, he shall file a complaint in district court. All proceedings upon such complaint must be promptly prosecuted.

History: En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(part); amd. Sec. 19, Ch. 397, L. 1979.

39-3-507. Prayer for relief. Should such complaint be filed by the county attorney upon his own motion or at said request of said commissioner of labor and industry, the same shall pray that relief be had against the employer for the greater security for the payment of salaries and wages of the employees.

History: En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(part).

39-3-508. Summons — service of process. (1) Upon the filing of such complaint, summons shall issue thereon and a copy of such complaint and a copy of the summons shall be served upon the employer, who shall have 10 days after such service to appear and defend such action.

(2) All orders and other process provided for in this part shall be served by the sheriff upon the employer in the same manner as a summons in a civil suit is served. Service upon any partner or member of any firm shall be considered service upon each partner and each member of the firm. In the event that the employer is a nonresident or a corporation without officers or directors within the county who cannot conveniently and promptly be found for service, then service upon the manager, superintendent, or foreman in charge of the work or, there being none such, then posting a copy of the order or other process provided to be served herein in a conspicuous place at or near the entrance to the principal workings shall be deemed sufficient service.

History: (1)En. Sec. 4, Ch. 39, L. 1939; Sec. 41-1315, R.C.M. 1947; (2)En. Sec. 7, Ch. 39, L. 1939; Sec. 41-1318, R.C.M. 1947; R.C.M. 1947, 41-1315(part), 41-1318.

39-3-509. Hearing on complaint — court order to pay wages due or appear and show cause why bond should not be required. Upon the conclusion of the hearing upon such complaint, the judge of the district court may make findings and shall issue an order to the employer in default to pay within 5 days all wages and salaries found by the court to be due and unpaid or an order to appear before the court within 10 days and show cause why a judgment and order should not issue requiring said employer to give bond for the payment of all wages and salaries then due and thereafter to accrue to his employees within said county. Service of such order shall be made at least 5 days before the date set for hearing or the date to which such hearing may be continued by the court upon good cause shown.

History: En. Sec. 5, Ch. 39, L. 1939; R.C.M. 1947, 41-1316.

39-3-510. Show-cause hearing — restraining order until bond furnished. Upon the hearing of such order, if the court shall determine that the default of said employer in the payment of wages and salaries was willful or that the financial condition of the employer is such as to endanger or delay or impede employees in collecting their wages and salaries or that the employer is a nonresident of the state without visible property in said county subject to execution or who has within 2 years defaulted in payroll payments, the court may adjudge and decree that the employee or employees are endangered in the collection of their just demands and the court may issue a restraining order against the employer forbidding further prosecution of operations by said employer until after the employer has furnished a good and sufficient bond, in form to be approved by the court with good and sufficient surety or sureties who can and do legally justify, and deposit said bond with the clerk of court of said county obligating the employer to pay all wages and salaries as required by part 2 of this chapter.

History: En. Sec. 6, Ch. 39, L. 1939; R.C.M. 1947, 41-1317(part).

39-3-511. Bond requirements. (1) Said bond may be that of a surety company licensed and authorized to do business within the state or of two owners of real estate situate in said county and who can and do justify as sureties in the same manner as sureties justify on appeal bonds or bail bonds.

(2) Said bond shall be in the sum of not less than $500 for each unit of five men or less employed by such person, firm, partnership, or corporation.

(3) Said bond shall continue in force for 1 year.

(4) Said bond shall run in the name of the state of Montana and shall be examined and approved by the judge of the district court, said approval to be endorsed thereon.

History: **En. Sec. 6, Ch. 39, L. 1939; R.C.M. 1947, 41-1317(part).**

39-3-512. Enjoining further operations in event bond not filed. (1) In the event that the bond ordered by the district court is not executed and filed with the county treasurer within the time fixed by the court, the court may, if it deems the persons working for such employer to be insecure in the prompt payment or collection of their wages or salaries, enjoin any and all further operations of said employer within the state for a period of 1 year at any mine or reduction works or oil well or until the order, judgment, or decree of the court shall have been fully complied with.

(2) The county attorney of the county wherein such proceedings are had or the attorney general of the state shall, at his or their discretion, file such action and prosecute the same.

History: **En. Sec. 8, Ch. 39, L. 1939; R.C.M. 1947, 41-1319(part).**

39-3-513. Costs of proceeding. The said district court shall include in any order, judgment, or decree against the employer all costs of the proceeding, which shall be taxed against the employer and paid into the clerk of the court to be by him deposited with the county treasurer to the credit of the general fund of the county.

History: **En. Sec. 8, Ch. 39, L. 1939; R.C.M. 1947, 41-1319(part).**

39-3-514. Punishment of employer for contempt. In event the employer fails for 30 days or more to pay the costs of the proceeding and/or fails to furnish the bond required by the court, the court may proceed against and punish said employer for contempt of court.

History: **En. Sec. 9, Ch. 39, L. 1939; R.C.M. 1947, 41-1320.**

39-3-515. Publication of notice of court order. In the discretion of the court, it may order the clerk of the court to publish a brief notice or memorandum in a newspaper published in the county of the entry of the order against the employer requiring said employer to furnish said bond. Said publication shall be for 4 consecutive weeks. The cost of such publication shall be assessed against the employer as one of the costs of the proceeding.

History: **En. Sec. 10, Ch. 39, L. 1939; R.C.M. 1947, 41-1321.**

39-3-516. Review of court order by supreme court. In event any employer against whom an order to furnish the bond described in this par feels aggrieved by any order or injunction of the district court, he shall be entitled, upon payment for the transcript of record, to have his objections and exceptions reviewed and determined by the supreme court as upon a writ of certiorari.

History: **En. Sec. 12, Ch. 39, L. 1939; R.C.M. 1947, 41-1323.**

39-3-517. Suit on bond. Any person whose wages or salary ha remained unpaid for 15 days or more after due shall have a right to sue upon said bond for the recovery of his wages or salary.

History: **En. Sec. 6, Ch. 39, L. 1939; R.C.M. 1947, 41-1317(part).**

39-3-518. Attorney's fee for suit on bond. In event any person whose wages or salary has remained unpaid for 15 days or more after due shall bring suit as in 39-3-517 provided, the court shall assess as costs against the unsuccessful party a reasonable attorney's fee.

History: En. Sec. 11, Ch. 39, L. 1939; R.C.M. 1947, 41-1322.

39-3-519. Clarification as to construction and applicability of part. (1) Nothing contained in this part shall be considered as requiring any person, firm, partnership, or corporation to file a bond or bonds if he or it pays for all labor in full each day or where such labor has been performed upon a written building or construction contract to furnish material or other consideration as well as labor.

(2) Nothing herein shall prohibit the making or entering into of any wage or working agreement such as grubstake agreements and/or similar agreements, provided such employer or contractor keeps in force proper workers' compensation insurance.

History: En. Sec. 6, Ch. 39, L. 1939; R.C.M. 1947, 41-1317(part).

39-3-520. Remedy cumulative. The remedy herein provided for the greater security for the payment of wages and salaries and the collection thereof shall be in addition to any remedy now provided by law for the payment and collection of wages and salaries.

History: En. Sec. 13, Ch. 39, L. 1939; R.C.M. 1947, 41-1324.

Part 6

Restaurant, Bar, and Tavern Wage Protection Act

39-3-601. Short title. This part shall be known as the "Restaurant, Bar, and Tavern Wage Protection Act".

History: En. Sec. 1, Ch. 155, L. 1965; R.C.M. 1947, 41-2001.

39-3-602. Purpose. The purpose of this part is to protect the state of Montana and employees of persons operating businesses as restaurants, bars, and taverns; to assure the payment of wages to such employees in the event the person ceases operation of his business and is unable to pay the wages due and owing to his employees; and to assure the payment of payroll taxes to the department.

History: En. Sec. 3, Ch. 155, L. 1965; amd. Sec. 2, Ch. 198, L. 1974; amd. Sec. 1, Ch. 238, L. 1975; R.C.M. 1947, 41-2003; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 366, L. 1983.

Compiler's Comments

1983 Amendment: Substituted "employees of persons operating businesses" for "employees of lessees conducting business"; substituted "person" for "lessee"; and deleted "of labor and industry" after "department".

1981 Amendment: Deleted "the division of employment security of" before "the department of labor and industry" near the end of the section.

39-3-603. Definitions. For the purposes of this part, the words and phrases used herein have the following meaning:

(1) "Bar" or "tavern" means a house where liquor or beer is sold to be drunk on the premises.

(2) "Beer" means any beverage so defined in the Montana Alcoholic Beverages Code.

(3) "Business" means a commercial enterprise of any kind involving the buying and selling of goods.

(4) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(5) "Department" means the department of labor and industry provided for in 2-15-1701.

(6) "Employee" means a person who works for wages or salary in the service of an employer.

(7) "Liquor" means any beverage so defined in the Montana Alcoholic Beverages Code.

(8) "Person" includes any establishment, firm, partnership, corporation, person, or association of persons.

(9) "Restaurant" means a public eating house where food is prepared and served for human consumption on the premises.

History: **En. Sec. 4, Ch. 155, L. 1965; amd. Sec. 3, Ch. 198, L. 1974; amd. Sec. 118, Ch. 387, L. 1975; R.C.M. 1947, 41-2004; amd. Sec. 2, Ch. 366, L. 1983.**

Compiler's Comments

1983 Amendment: Inserted the definition of "Commissioner" and "Department"; deleted definition of "Lessee" which was "one to whom a lease is made".

39-3-604. Bond to be filed — bond requirements. (1) Every person operating a business as a restaurant, bar, or tavern is hereby required to file a bond equal to at least double the amount of the projected semimonthly payroll with the commissioner. Said bond shall at all times be kept in full force and effect, and any cancellation or revocation thereof or withdrawal of the sureties therefrom is grounds for enjoining the operation of business, as provided for in 39-3-607, until such time as a new bond of like tenure and effect shall have been filed and approved as herein provided.

(2) The bond required by subsection (1) of this section shall be filed with the commissioner. The state of Montana shall be named as the obligee therein, with good and sufficient sureties to be approved by the attorney general.

(3) Such bond shall be conditioned to assure that the employees who perform labor or other personal services are guaranteed their wages in the event the person ceases operation of the business for any reason and is unable to pay the wages due and owing the employees and to assure payment due the department as a result of payroll taxes.

(4) Except as provided in 39-3-605(2), this section does not apply to any person who has operated the same restaurant, bar, or tavern continuously since October 1, 1980.

History: **Ap. p. Sec. 5, Ch. 155, L. 1965; amd. Sec. 4, Ch. 198, L. 1974; Sec. 41-2005, R.C.M. 1947; Ap. p. Sec. 6, Ch. 155, L. 1965; amd. Sec. 5, Ch. 198, L. 1974; amd. Sec. 2, Ch. 238, L. 1975; Sec. 41-2006, R.C.M. 1947; R.C.M. 1947, 41-2005, 41-2006; amd. Sec. 1, Ch. 60, L. 1979; amd. Sec. 3, Ch. 366, L. 1983.**

Compiler's Comments

1983 Amendment: At beginning of (1), substituted "Every person operating a business" for "Every person who leases from another person premises for the purpose of conducting therein a business"; in the middle of (1) and (2), substituted "commissioner" for "commissioner of labor and industry"; in the middle of (1), substituted "enjoining the operation of business" for "enjoining the conduct of business"; at the beginning of (2), deleted "and affidavit" after

'The bond"; at the beginning of (3), substituted 'such bond shall be conditioned to assure that he employees" for "such bond shall be conditioned to assure that in any lease transaction of he type referred to in 39-3-608 the persons"; in niddle of (3), deleted "for the lessee" after "or ther personal services" and substituted "in the vent the person ceases operation" for "in the vent the lessee ceases operation"; near end of (3), substituted "department" for "division of employment security"; and inserted (4).

Cross-References
"Bar" defined, 39-3-603.
"Business" defined, 39-3-603.
"Person" defined, 39-3-603.
"Restaurant" defined, 39-3-603.
"Tavern" defined, 39-3-603.

39-3-605. Waiver of bond — new or additional bond. (1) After 3 ears of compliance with this part, the commissioner shall waive the proviions of 39-3-604 for any person showing compliance with the applicable rovisions of the Fair Labor Standards Act and all the applicable laws adminstered by the department.

(2) Notwithstanding 39-3-604(4) and subsection (1) of this section, the ommissioner may require a person operating a restaurant, bar, or tavern, ncluding a person who has been in business since October 1, 1980, or for over years, to file a new bond or a bond of a greater amount than double the emimonthly payroll whenever the person operating a restaurant, bar, or avern defaults on the payment of wages, payroll taxes, or workers' compensaion premiums.

History: En. Sec. 10, Ch. 155, L. 1965; amd. Sec. 3, Ch. 238, L. 1975; R.C.M. 1947, 1-2010(part); amd. Sec. 4, Ch. 366, L. 1983.

ompiler's Comments
1983 Amendment: Inserted (1); and substited (2) for: "The commissioner of labor and dustry may require a new bond or a bond of a greater amount than double the semimonthly payroll whenever the commissioner deems it necessary for the protection of the state of Montana or the employees of a lessee."

39-3-606. Power of commissioner to discharge existing sureties nd require others. The commissioner of labor and industry may, after due otice given, discharge the existing sureties from further liability and require hat other sureties be provided.

History: En. Sec. 10, Ch. 155, L. 1965; amd. Sec. 3, Ch. 238, L. 1975; R.C.M. 1947, 1-2010(part).

39-3-607. Enjoining business until bond filed. If any person operates restaurant, bar, or tavern business without having first filed a bond as equired by 39-3-604 or by 39-3-605, the attorney general, the commissioner, r any citizen, group of citizens, or any association in the county where the iolator operates his business may institute an action to enjoin such person om operating the business until compliance with this part has been met.

History: En. Sec. 8, Ch. 155, L. 1965; R.C.M. 1947, 41-2008; amd. Sec. 5, Ch. 366, L. 1983.

ompiler's Comments
1983 Amendment: At beginning of section, bstituted "If any person operates a restaurant, r, or tavern business" for "If any person gages in the restaurant, bar or tavern business lessee"; in middle of section, substituted 9-3-604 or by 39-3-605" for "39-3-604(1)" and leted "of labor and industry" after "commisner"; and near end of section, substituted here the violator operates" for "where the lator conducts" and substituted "to enjoin such person from operating the business" for "to enjoin such person from engaging in the business".

Cross-References
Injunctions, Title 27, ch. 19.
"Bar" defined, 39-3-603.
"Business" defined, 39-3-603.
"Person" defined, 39-3-603.
"Restaurant" defined, 39-3-603.
"Tavern" defined, 39-3-603.

39-3-608. Unlawful to operate business without bond. From and after October 1, 1983, it shall be unlawful for any person to operate a restaurant, bar, or tavern business without first having filed with the commissioner a bond in accordance with the requirements of 39-3-604 or 39-3-605.

History: En. Sec. 2, Ch. 155, L. 1965; amd. Sec. 1, Ch. 198, L. 1974; R.C.M. 1947, 41-2002; amd. Sec. 6, Ch. 366, L. 1983.

Compiler's Comments

1983 Amendment: Near beginning, substituted "October 1, 1983" for "July 1, 1965"; near middle substituted "for any person to operate a restaurant" for "for any person to lease premises to be used as the place for conducting a restaurant"; near end deleted "of labor and industry" after "commissioner"; and at end substituted "39-3-604 or 39-3-605" for "39-3-604(1)".

Cross-References

"Bar" defined, 39-3-603.
"Business" defined, 39-3-603.
"Person" defined, 39-3-603.
"Restaurant" defined, 39-3-603.
"Tavern" defined, 39-3-603.

Part 7

Contractors' Bonds for Wages and Benefits

39-3-701. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Commissioner" means the commissioner of labor and industry.

(2) "Contractor" means any person, firm, association, or corporation engaged in the construction business.

(3) "Resident contractor" means any person who is a bona fide resident of this state, any partnership or association, the majority of whose members are bona fide residents of this state, or any corporation organized and existing under the laws of the state of Montana.

History: (1), (2)En. 41-2501 by Sec. 1, Ch. 208, L. 1975; Sec. 41-2701, R.C.M. 1947; (3)En. 41-2504 by Sec. 4, Ch. 208, L. 1975; Sec. 41-2704, R.C.M. 1947; R.C.M. 1947, 41-2701, 41-2704(2).

39-3-702. Rules. The commissioner shall promulgate any rules necessary to carry out the provisions of this part.

History: En. 41-2505 by Sec. 5, Ch. 208, L. 1975; R.C.M. 1947, 41-2705.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

39-3-703. Contractor to furnish bond for wages and fringe benefits — bond requirements. (1) Any contractor who contracts with anothe to do any work or perform any services for the other, except personal service of the contractor not involving work of hired employees, shall furnish a suret bond or other form of security to the other which shall be:

(a) approved by the commissioner;

(b) in an amount equal to the contractor's average monthly payroll as esti mated by the commissioner;

(c) in the name of the state of Montana;

(d) for the purpose of insuring the wages and fringe benefits of all worker employed by the contractor for the contracted work;

(e) filed with the commissioner within 1 week of the making of the con tract or the commencement of work thereunder, whichever comes first.

(2) Only one bond shall be required on any contractor for each year, and when the bond is filed with and approved by the commissioner, the commissioner shall certify to any person contracting with a contractor that the bond is in full force and effect.

History: **En. 41-2502 by Sec. 2, Ch. 208, L. 1975; R.C.M. 1947, 41-2702(1), (3).**

39-3-704. Exception. The provisions of this part do not apply to any resident contractor who presents to the commissioner a financial statement certified by a licensed certified public accountant attesting to a net worth of the contractor in excess of $50,000.

History: **En. 41-2504 by Sec. 4, Ch. 208, L. 1975; R.C.M. 1947, 41-2704(1).**

39-3-705. Suit on bond. Any employee employed by a contractor may bring an action on the surety bond in his own name for unpaid wages and fringe benefits.

History: **En. 41-2503 by Sec. 3, Ch. 208, L. 1975; R.C.M. 1947, 41-2703.**

39-3-706. Liability of person contracting with contractor for failure to require bond. Any person contracting with a contractor who fails to require the contractor to acquire the surety bond provided for in 39-3-703(1) is liable to the employees of that contractor for their wages and fringe benefits on that particular job.

History: **En. 41-2502 by Sec. 2, Ch. 208, L. 1975; R.C.M. 1947, 41-2702(2).**

CHAPTER 4

HOURS OF LABOR IN CERTAIN EMPLOYMENTS

Part 1 — Hours of Labor—Penalties and Liability for Violations Thereof

Section
39-4-101. Hoisting engineers.
39-4-102. Drivers and attendants of motor buses.
39-4-103. Underground miners and smeltermen.
39-4-104. Strip mining.
39-4-105. Retail stores.
39-4-106. Telephone operators.
39-4-107. State and municipal governments, school districts, mines, mills, and smelters.
39-4-108. Repealed.
39-4-109. Cement plants and quarries.
39-4-110. Sugar refineries.
39-4-111. Restaurants.
39-4-112. Persons employed about public amusements.

Part 1

Hours of Labor — Penalties and Liability for Violations Thereof

39-4-101. Hoisting engineers. (1) It shall be unlawful for any person or persons, company, or corporation to operate or handle or to induce, persuade, or prevail upon any person or persons to operate or handle for more than 8 hours in 24 hours of each day any hoisting engine at or in any mine.

(2) This section shall apply only to such plants as are in continuous operation or are operated 16 or more hours in 24 hours of each day or at or in any mine where said hoisting engine develops 15 or more horsepower or at or in any mine wherein there are 15 or more men employed underground in 24 hours of each day. However, the provisions of this section shall not apply to any person or persons operating any hoisting engine more than 8 hours in each 24 hours for the purpose of relieving another employee in case of sickness or other unforeseen cause or causes.

(3) Any person or persons, company, or corporation who shall violate any of the provisions of this section shall upon conviction be punished by a fine of not less than $10 or more than $100. Each and every day that such person or persons, company, or corporation may continue to violate any of the provisions of this section shall be considered a separate and distinct offense and shall be punishable as such.

History: (1), (2)En. Sec. 1, Ch. 53, L. 1903; re-en. Sec. 1734, Rev. C. 1907; re-en. Sec. 3068, R.C.M. 1921; re-en. Sec. 3068, R.C.M. 1935; Sec. 41-1101, R.C.M. 1947; (3)En. Sec. 2, Ch. 53, L. 1903; re-en. Sec. 1735, Rev. C. 1907; re-en. Sec. 3069, R.C.M. 1921; re-en. Sec. 3069, R.C.M. 1935; Sec. 41-1102, R.C.M. 1947; R.C.M. 1947, 41-1101, 41-1102.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

39-4-102. Drivers and attendants of motor buses. (1) Drivers or attendants of motor buses employed in the state may not be employed for more than 8 hours in any 24-hour period. Drivers or attendants of motor buses must be allowed a rest of at least 12 hours between the completion of their services in any 24-hour period and the beginning of their services in the succeeding 24-hour period. In computing the number of hours of employment made by the provisions of this section, evidence may be introduced showing that part of such time is consumed prior to entry within the state.

(2) The provisions of this section do not apply to drivers or attendants employed by a city, town, county, or political subdivision thereof.

(3) The provisions of this section do not apply when life is in danger or property is in imminent danger of destruction; or in case of delay due to accident or impassable roads, abnormal road conditions, or snow blockades; or when mails for the drivers or attendants are delayed.

(4) "Attendant", for the purpose of this section, is defined as any employee engaged for a portion of a day driving or repairing a motor bus and who is required to remain on the vehicle as a relief driver or mechanic for time in excess of the 8-hour period for which he is rightly employed.

(5) Any employer or supervisor in charge of employees who requires a driver or attendant as above defined to labor contrary to the provisions of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $100 or more than $600 or by imprisonment of not less than 30 days or more than 7 months or both such fine and imprisonment.

(6) All motor bus companies operating lines in this state are liable in damage for all injuries to the person resulting from the violation of the provisions of this section.

History: En. Secs. 1, 2, 3, Ch. 76, L. 1935; re-en. Secs. 3069.1, 3069.2, 3069.3, R.C.M. 1935; R.C.M. 1947, 41-1103, 41-1104, 41-1105; amd. Sec. 1, Ch. 126, L. 1979; amd. Sec. 20, Ch. 397, L. 1979.

Cross-References
Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.

39-4-103. Underground miners and smeltermen. (1) The period of employment of workers in all underground mines or workings, including railroad or other tunnels, is 8 hours per day, except in cases of emergency when life and property are in imminent danger.

(2) The period of employment of workers in smelters, stamp mills, sampling works, concentrators, and all other institutions for the reduction of ores and refining of ores or metals is 8 hours per day, except in cases of emergency where life or property is in imminent danger.

(3) Any person, corporation, agent, manager, or employer who violates any of the provisions of this section is guilty of a misdemeanor and upon conviction thereof for each offense is subject to a fine of not less than $100 or more than $600 or by imprisonment in the county jail for a period of not less than 1 month or more than 7 months or by both such fine and imprisonment.

History: (1)En. Sec. 1, p. 62, L. 1901; re-en. Sec. 1736, Rev. C. 1907; amd. Sec. 1, Ch. 21, L. 1911; re-en. Sec. 3071, R.C.M. 1921; re-en. Sec. 3071, R.C.M. 1935; Sec. 41-1107, R.C.M. 1947; (2)En. Sec. 2, p. 63, L. 1901; re-en. Sec. 1737, Rev. C. 1907; re-en. Sec. 3072, R.C.M. 1921; e-en. Sec. 3072, R.C.M. 1935; Sec. 41-1108, R.C.M. 1947; (3)En. Sec. 3, p. 63, L. 1901; re-en. Sec. 1738, Rev. C. 1907; re-en. Sec. 3073, R.C.M. 1921; amd. Sec. 1, Ch. 116, L. 1929; re-en. Sec. 3073, R.C.M. 1935; Sec. 41-1109, R.C.M. 1947; R.C.M. 1947, 41-1107, 41-1108, 41-1109; md. Sec. 21, Ch. 397, L. 1979.

Cross-References
Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.

39-4-104. Strip mining. (1) For the purpose of this section, "strip mining" is defined as the removal of the overburden and coal or other materials from the ground and all of the operations pertaining thereto, without the ecessity of providing timbers for the holding of said ground in place.

(2) A period of not more than 8 hours will constitute a day's labor of all mployees working in strip mining, except in cases of emergencies for the protection of life or property when same is in danger.

(3) Any person, company, corporation, or lessee of the same who shall violate the provisions of this section shall upon conviction be punished by a fine f not less than $50 or more than $600 or by imprisonment of not less than 0 days or more than 7 months or both such fine and imprisonment. Each nd every day that such person, company, corporation, or lessee may continue o violate the provisions of this section shall be considered a separate and dis-nct offense and shall be punished as such.

History: En. Secs. 1, 2, 3, Ch. 76, L. 1933; re-en. Secs. 3546.7, 3546.8, 3546.9, R.C.M. 1935; C.M. 1947, 41-1110, 41-1111, 41-1112.

ross-References
Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.

39-4-105. Retail stores. (1) A period of 8 hours shall constitute a day's ork and a period of not to exceed 48 hours shall constitute a week's work all cities and towns having a population of 2,500 or over for all persons nployed in retail stores and in all leased businesses where the lessor dictates e price, kind of merchandise that is sold, and the hours and conditions of peration of the business; all persons employed in delivering goods sold in ch stores; all persons employed in wholesale warehouses used for supplying retail establishments with goods; and all persons employed in delivering good to retail establishments from such wholesale warehouses.

(2) The provisions of this section shall not apply to registered pharmacist or assistant pharmacists.

(3) Any person, corporation, agent, manager, or employer who shall violat any of the provisions of this section shall be guilty of a misdemeanor an upon conviction thereof shall be punished by a fine of not less than $50 o more than $600 or by imprisonment in the county jail for not less than 3 days or more than 7 months or by both such fine and imprisonment.

History: (1)En. Sec. 1, Ch. 8, Ex. L. 1933; re-en. Sec. 3073.1, R.C.M. 1935; Sec. 41-1113 R.C.M. 1947; (2)En. Sec. 3, Ch. 8, Ex. L. 1933; re-en. Sec. 3073.3, R.C.M. 1935; Sec. 41-1115 R.C.M. 1947; (3)En. Sec. 2, Ch. 8, Ex. L. 1933; re-en. Sec. 3073.2, R.C.M. 1935; Sec. 41-1114 R.C.M. 1947; R.C.M. 1947, 41-1113, 41-1114, 41-1115.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

39-4-106. Telephone operators. (1) On all lines of public telephone operated in whole or in part within this state, it shall hereafter be unlawfu for any owner, lessee, company, or corporation to hire or employ any operato or operators, other person or persons to run or operate a telephone board o boards for more than 9 hours in 24 hours in cities or towns having a population of 3,000 inhabitants or over.

(2) The provisions of this section shall not apply to any person or persons, operator or operators operating any telephone board or boards mor than 9 hours in each 24 for the purpose of relieving another employee in cas of sickness or other unforeseen cause or causes.

(3) Any owner, lessee, company, or corporation who shall violate any o the provisions of this section shall upon conviction be punished by a fine o not less than $100 or more than $500. Each and every day that such owne lessee, company, or corporation may continue to violate any of the provision of this section shall be considered a separate and distinct offense and sha be punished as such.

History: (1), (2)En. Sec. 1, Ch. 75, L. 1909; re-en. Sec. 3074, R.C.M. 1921; re-en. Sec. 307 R.C.M. 1935; Sec. 41-1116, R.C.M. 1947; (3)En. Sec. 2, Ch. 75, L. 1909; re-en. Sec. 3075, R.C.M 1921; re-en. Sec. 3075, R.C.M. 1935; Sec. 41-1117, R.C.M. 1947; R.C.M. 1947, 41-1116, 41-1117

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

39-4-107. State and municipal governments, school districts mines, mills, and smelters. (1) A period of 8 hours constitutes a day's wor in all works and undertakings carried on or aided by any municipal or count government, the state government, or a first-class school district, and on a contracts let by them, and for all janitors (except in courthouses of sixth- an seventh-class counties), engineers, firefighters, caretakers, custodians, an laborers employed in or about any buildings, works, or grounds used or occupied for any purpose by such municipal, county, or state government or first-class school district. A period of 8 hours constitutes a day's work in mills an smelters for the treatment of ores, in underground mines, and in the washin reducing, and treatment of coal. This subsection does not apply in the ever of an emergency when life or property is in imminent danger or to the situations specified in subsections (3) and (4).

(2) The provisions of subsection (1) do not apply to firefighters who are working a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative.

(3) In counties where regular road and bridge departments are maintained, the county commissioners may, with the approval of the employees or their duly constituted representative, establish a 40-hour workweek consisting of 4 consecutive 10-hour days. No employee may be required to work in excess of 8 hours in any one workday if he prefers not to.

(4) In municipal and county governments, the employer and employee may agree to a workday of more than 8 hours and to a 7-day, 40-hour work period:

(a) through a collective bargaining agreement when a collective bargaining unit represents the employee; or

(b) by the mutual agreement of the employer and employee when no bargaining unit is recognized.

History: (1) thru (3)En. Sec. 1, Ch. 50, L. 1905; amd. Sec. 1, Ch. 108, L. 1907; re-en. Sec. 1739, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1917; re-en. Sec. 3079, R.C.M. 1921; Cal. Pol. C. Secs. 3244, 3245; amd. Sec. 2, Ch. 116, L. 1929; re-en. Sec. 3079, R.C.M. 1935; amd. Sec. 1, Ch. 135, L. 1943; amd. Sec. 1, Ch. 244, L. 1957; amd. Sec. 1, Ch. 395, L. 1975; Sec. 41-1121, R.C.M. 1947; (4)En. Sec. 2, Ch. 50, L. 1905; amd. Sec. 2, Ch. 108, L. 1907; re-en. Sec. 1740, Rev. C. 1907; re-en. Sec. 3080, R.C.M. 1921; amd. Sec. 3, Ch. 116, L. 1929; re-en. Sec. 3080, R.C.M. 1935; Sec. 41-1122, R.C.M. 1947; R.C.M. 1947, 41-1121, 41-1122; amd. Sec. 22, Ch. 397, L. 1979; amd. Sec. 2, Ch. 375, L. 1983; amd. Sec. 2, Ch. 640, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 375 substituted (2) for "For firefighters in cities of the first and second class, a workweek consists of a maximum of 40 hours during a 5-day week."

Chapter 640 substituted last sentence of (1) for former last sentence, which read: "In cases of emergency when life or property is in imminent danger this subsection does not apply."; and substituted existing (4) for former (4), which read: "Every person, corporation, stock company, or association of persons who violates any of the provisions of this section is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $100 or more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment."

Cross-References

Labor — hours of employment, Art. XII, sec. 2, Mont. Const.

39-4-108. Repealed. Sec. 1, Ch. 381, L. 1979.

History: (1), (2)En. Sec. 1, Ch. 5, L. 1907; Sec. 1741, Rev. C. 1907; re-en. Sec. 3081, R.C.M. 1921; re-en. Sec. 3081, R.C.M. 1935; amd. Sec. 1, Ch. 206, L. 1969; Sec. 41-1123, R.C.M. 1947; (3)En. Sec. 3, Ch. 5, L. 1907; Sec. 1743, Rev. C. 1907; re-en. Sec. 3083, R.C.M. 1921; re-en. Sec. 3083, R.C.M. 1935; Sec. 41-1125, R.C.M. 1947; (4), (5)En. Sec. 2, Ch. 5, L. 1907; Sec. 1742, Rev. C. 1907; re-en. Sec. 3082, R.C.M. 1921; re-en. Sec. 3082, R.C.M. 1935; Sec. 41-1124, R.C.M. 1947; R.C.M. 1947, 41-1123, 41-1124, 41-1125; amd. Sec. 23, Ch. 397, L. 1979.

39-4-109. Cement plants and quarries. (1) A period of 8 hours shall constitute a day's work, except in cases of emergency where life and property are in imminent danger, for all persons employed in or about cement plants and at quarries.

(2) Any person, corporation, agent, manager, or employer who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 or

more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment.

History: **(1)En. Sec. 1, Ch. 77, L. 1933; re-en. Sec. 3083.1, R.C.M. 1935; Sec. 41-1126, R.C.M. 1947; (2)En. Sec. 2, Ch. 77, L. 1933; re-en. Sec. 3083.2, R.C.M. 1935; Sec. 41-1127, R.C.M. 1947; R.C.M. 1947, 41-1126, 41-1127; amd. Sec. 1, Ch. 281, L. 1985.**

Compiler's Comments

1985 Amendment: At end of (1) deleted "and hydroelectric dams".

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

39-4-110. Sugar refineries. (1) A period of not to exceed 8 hours constitutes a day's work for all persons employed in or about sugar refineries, except in a case of emergency when life or property is in danger.

(2) The provisions of this section do not apply to beet receiving station employees or superintendents, master mechanics, or beet-end, sugar-end, and Steffan house foremen.

(3) Any person, corporation, agent, manager, or employer who violates the provisions of this section is guilty of a misdemeanor and upon conviction thereof is punishable by a fine of not less than $50 or more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment.

History: **En. Secs. 1, 2, 3, Ch. 90, L. 1933; re-en. Secs. 3083.3, 3083.4, 3083.5, R.C.M. 1935; R.C.M. 1947, 41-1128, 41-1129, 41-1130; amd. Sec. 24, Ch. 397, L. 1979.**

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

39-4-111. Restaurants. (1) A period of not more than 8 hours shall constitute a day's work, and a period of not to exceed 48 hours shall constitute a week's work for persons employed in or about restaurants, cafes, lunch counters, and other commercial eating establishments. The hours of work must be so arranged that persons employed in or about restaurants, cafes, lunch counters, and other commercial eating establishments shall not be on duty more than 8 hours in the aggregate of any 12 consecutive hours. Such persons shall have at least 12 consecutive hours off duty.

(2) The provisions of this section shall not apply to any person or persons working more than 8 hours during any 12 consecutive hours or more than 48 hours during any week for the purpose of relieving another employee in case of sickness or where the health of the public is imperiled, where life and property are in imminent danger, or for other unforeseen cause or causes.

(3) Any person, corporation, manager, agent, or employer who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $25 or more than $50 or by imprisonment in the county jail for not less than 15 days or more than 60 days or by both such fine and imprisonment.

History: **(1), (2)En. Sec. 1, Ch. 199, L. 1939; Sec. 41-1131, R.C.M. 1947; (3)En. Sec. 2, Ch. 199, L. 1939; Sec. 41-1132, R.C.M. 1947; R.C.M. 1947, 41-1131, 41-1132.**

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

39-4-112. Persons employed about public amusements. (1) A period of not to exceed 8 hours shall constitute a day's work and a period of not to exceed 48 hours shall constitute a week's work for persons employed or working in or participating in and about any carnival, circus, derby show walkathon, marathon dance, marathon race, marathon walk, or other endurance contest by whatever name it may be called within the state. The hours of work must be so arranged that persons employed in or participating or contesting in such an exhibition, show, or contest shall not be on duty more than 8 hours in the aggregate of any 12 consecutive hours. Such persons shall have at least 12 consecutive hours off duty.

(2) The provisions of this section shall not apply to any traveling circus or carnival which does not remain in any one county of the state for a period of more than 3 days and shall not apply to any person or persons working more than 8 hours in each 12 hours for the purpose of relieving another employee in case of sickness or where a breakdown in machinery occurs or where life or property is in imminent danger.

(3) Any person, corporation, agent, manager, employer, employee, contestant, or participant who shall violate the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished for the first offense by a fine of not less than $50. For a second offense, he shall be punished by a fine of not less than $100 or more than $500 or by imprisonment in the county jail for not less than 90 days or more than 6 months or by both such fine and imprisonment. For a third or subsequent offense, he shall be punished by a fine of $500 and imprisonment in the county jail for a term of 6 months. Each day's violation of this section shall constitute a separate offense within the meaning of this section.

History: (1), (2)En. Sec. 1, Ch. 21, L. 1941; Sec. 41-1133, R.C.M. 1947; (3)En. Sec. 2, Ch. 21, L. 1941; Sec. 41-1134, R.C.M. 1947; R.C.M. 1947, 41-1133, 41-1134.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

CHAPTER 5

THE EMPLOYMENT AGENCY ACT

Part 1 — General Provisions

Section
39-5-101. Short title.
39-5-102. Definitions.
39-5-103. Administration — rules.
39-5-104. Provisions of chapter exclusive.
39-5-105. Power of political subdivision to license for revenue purposes not affected.

Part 2 — Licensing

39-5-201. Conducting business without license a misdemeanor.
39-5-202. Application for license or renewal.
39-5-203. Grounds for denial, suspension, or revocation of license.
39-5-204. License fees.
39-5-205. Disposition of license fees.
39-5-206. Bond of licensee.
39-5-207. License to be conspicuously displayed.
39-5-208. Expiration of license.
39-5-209. Consent required prior to transfer of license or connection of additional persons with business.

Part 3 — Contracts, Fees, and General Operation of Business

39-5-301. Records to be kept.
39-5-302. Applicant to receive contract — required contents of contract.
39-5-303. Regulation of fees — disapproval of contract.
39-5-304. False or fraudulent advertisement prohibited — disclosure requirements of advertisement.
39-5-305. Agency not to induce employee to quit or employer to discharge.
39-5-306. Agency not to refer applicant where strike or lockout exists.
39-5-307. Agency to reconfirm job opening.
39-5-308. When agency may charge a fee.
39-5-309. Repealed.
39-5-310. Payment of fee when applicant referred by two agencies.
39-5-311. Fees to be returned in certain cases.
39-5-312. Agency not to share fees with employer.

Part 4 — Investigations and Enforcement

39-5-401. Investigative powers of director.
39-5-402. Department to forward complaints to agency involved or agency association.
39-5-403. Referral of violations to prosecuting attorneys — restraining actions.
39-5-404. Written assurance of discontinuance.
39-5-405. Civil penalty for violating court order.
39-5-406. Jurisdiction over nonresidents.

Part 1

General Provisions

39-5-101. Short title. This chapter shall be known and cited as "The Employment Agency Act".

History: **En. Sec. 1, Ch. 430, L. 1971; R.C.M. 1947, 41-1417.**

39-5-102. Definitions. Unless a different meaning is clearly required by the context, the following words and phrases, as used in this chapter, have the following meanings:

(1) (a) "Employment agency" is synonymous with "agency" and means any business in which any part of the business's gross or net income is derived from a fee received from applicants and in which any of the following activities are engaged in:

(i) the offering, promising, procuring, or attempting to procure employment for applicants; or

(ii) the giving of information regarding where and from whom employment may be obtained.

(b) In addition, the term "employment agency" means and includes any person, bureau, organization, or school which for profit, by advertisement or otherwise, offers as one of its main objects or purposes to procure employment for any person who pays for its services or which collects tuition or charges for service of any nature where the main object of the person paying the same is to secure employment.

(c) The term "employment agency" does not include labor union organizations, temporary service contractors, proprietary schools, musical booking services, agents for professional athletes, or the Montana state employment agency.

(2) "Temporary service contractors" means any person, firm, association, or corporation conducting a business which consists of employing individuals directly for the purpose of furnishing such individuals on a part-time or temporary basis to others.

(3) "Employer" means any person, firm, corporation, partnership, or association employing or seeking to enter into an arrangement to employ a person through the medium or service of an employment agency.

(4) "Applicant", except when used to describe an applicant for an employment agency license, means any person, whether employed or unemployed, seeking or entering into any arrangement for his employment or change of his employment through the medium or service of an employment agency.

(5) "Person" includes an individual, a firm, a corporation, a partnership, or an association.

(6) "Director" means the commissioner of the department of labor and industry.

(7) "Musical booking service" means any person, firm, association, or corporation conducting a business which consists solely of obtaining, obtaining offers of, and negotiating employment for individuals or groups of individuals for musical entertainment purposes.

(8) "Agents for professional athletes" means any person, firm, association, or corporation conducting a business that consists solely of obtaining, obtaining offers of, and negotiating contracts of employment of professional athletes.

History: **En. Sec. 2, Ch. 430, L. 1971; R.C.M. 1947, 41-1418; amd. Sec. 1, Ch. 156, L. 1979; md. Sec. 25, Ch. 397, L. 1979; amd. Sec. 1, Ch. 33, L. 1981.**

ompiler's Comments

1981 Amendment: Inserted "agents for pro-essional athletes" in (1)(c) and added subsec-ion (8).

39-5-103. Administration — rules. The director shall administer the rovisions of this chapter and shall issue from time to time reasonable rules or enforcing and carrying out the provisions and purposes of this chapter.

History: **En. Sec. 7, Ch. 430, L. 1971; R.C.M. 1947, 41-1423(1).**

ross-References

"Director" defined, 39-5-102.

39-5-104. Provisions of chapter exclusive. The provisions of this hapter relating to the regulation of private employment agencies shall be xclusive.

History: **En. Sec. 22, Ch. 430, L. 1971; R.C.M. 1947, 41-1438(1).**

39-5-105. Power of political subdivision to license for revenue urposes not affected. This chapter shall not be construed to affect or educe the authority of any political subdivision of the state to provide for the censing of private employment agencies solely for revenue purposes.

History: **En. Sec. 22, Ch. 430, L. 1971; R.C.M. 1947, 41-1438(2).**

Part 2

Licensing

39-5-201. Conducting business without license a misdemeanor. It hall be a misdemeanor for any person to conduct an employment agency business in this state unless he has an employment agency license issued pursuant to the provisions of this chapter.

History: En. Sec. 8, Ch. 430, L. 1971; R.C.M. 1947, 41-1424.

Cross-References

"Employment agency" defined, 39-5-102.

"Person" defined, 39-5-102.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Penalty for misdemeanor, 46-18-212.

39-5-202. Application for license or renewal. (1) Every applicant for an employment agency license or a renewal thereof shall file with the director a written application stating the name and address of the applicant, the street and number of the building in which the business of the employment agency is to be conducted, the name of the person who is to have the general management of the office, the name under which the business of the office is to be carried on, and whether or not the applicant is pecuniarily interested in the business to be carried on under the license. The application must be signed by the applicant and sworn to before a notary public and must identify anyone holding over 20% interest in the agency.

(2) If the applicant is a corporation, the application must state the names and addresses of the officers and directors of the corporation and must be signed and sworn to by the president and secretary thereof before a notary public.

(3) If the applicant is a partnership, the application must also state the names and addresses of all partners therein and must be signed and sworn to by all of them before a notary public.

(4) The application must also state whether or not the applicant, at the time of making the application or at any previous time, has been engaged in or interested in or employed by anyone engaged in the business of an employment agency.

(5) All applications for employment agency licenses must be accompanied by a copy of the form of contract to be used between the agency and the applicant.

History: En. Sec. 10, Ch. 430, L. 1971; R.C.M. 1947, 41-1426; amd. Sec. 26, Ch. 397, L. 1979.

Cross-References

"Applicant" defined, 39-5-102.

"Director" defined, 39-5-102.

"Employment agency" defined, 39-5-102.

"Person" defined, 39-5-102.

39-5-203. Grounds for denial, suspension, or revocation of license. The director may by order deny, suspend, or revoke the license of any employment agency if he finds that the applicant or licensee:

(1) was previously the holder of a license issued under this chapter which was revoked for cause and never reissued by the director or which license was suspended for cause and the terms of the suspension have not been fulfilled;

(2) has been found guilty of any felony within the past 5 years involving moral turpitude or for any misdemeanor concerning fraud or conversion or suffering any judgment in any civil action involving willful fraud, misrepresentation, or conversion;

(3) has made a false statement of a material fact in his application or in any data attached thereto;

(4) has violated any provisions of this chapter or failed to comply with any rule issued by the director pursuant to this chapter.

History: En. Sec. 13, Ch. 430, L. 1971; R.C.M. 1947, 41-1429.

Cross-References
"Applicant" defined, 39-5-102.
"Director" defined, 39-5-102.
"Employment agency" defined, 39-5-102.

39-5-204. License fees. The following fees shall be charged by the director to those parties licensed as employment agencies:
(1) original applications, $100;
(2) renewal per year, $100;
(3) branch license, both original and renewal, $100;
(4) transfer of license, $25;
(5) approval of amended or new contracts, $15 per contract.
History: En. Sec. 14, Ch. 430, L. 1971; R.C.M. 1947, 41-1430.

Cross-References
"Director" defined, 39-5-102.

39-5-205. Disposition of license fees. All license fees shall revert to department of labor and industry to be used for administration of this chapter.
History: En. Sec. 22, Ch. 430, L. 1971; R.C.M. 1947, 41-1438(3).

39-5-206. Bond of licensee. Before conducting any business as an employment agency, each licensee shall file with the director a surety bond in the sum of $2,000 running to the state of Montana for the benefit of any person injured or damaged as a result of any violation by the licensee or his agent of any of the provisions of this chapter or of any rule adopted by the director pursuant to 39-5-103.
History: En. Sec. 9, Ch. 430, L. 1971; amd. Sec. 3, Ch. 237, L. 1975; R.C.M. 1947, 41-1425.

Cross-References
"Director" defined, 39-5-102.
"Employment agency" defined, 39-5-102.
"Person" defined, 39-5-102.

39-5-207. License to be conspicuously displayed. Every license or a verified copy thereof shall be displayed in a conspicuous place in each office of the employment agency.
History: En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(1).

Cross-References
"Employment agency" defined, 39-5-102.

39-5-208. Expiration of license. An employment agency license shall expire June 30.
History: En. Sec. 11, Ch. 430, L. 1971; R.C.M. 1947, 41-1427.

Cross-References
"Employment agency" defined, 39-5-102.

39-5-209. Consent required prior to transfer of license or connection of additional persons with business. No license granted pursuant to this chapter shall be transferable without the consent of the director. No employment agency shall permit any person not mentioned in the license application to become connected with the business as an owner, member, officer, or director without the consent of the director. Consent may be withheld for any reason for which an original application for a license might have been rejected if the person in question had been mentioned therein.
History: En. Sec. 12, Ch. 430, L. 1971; R.C.M. 1947, 41-1428.

Cross-References
"Director" defined, 39-5-102.
"Employment agency" defined, 39-5-102.
"Person" defined, 39-5-102.

Part 3

Contracts, Fees, and General Operation of Business

39-5-301. Records to be kept. (1) Each employment agency shall keep records of all services rendered employers and applicants. These records shall contain the name and address of the employer by whom the services were solicited, the name and address of the applicant, kind of position ordered by the employer, kind of position accepted by the applicant, probable duration of the employment, if known, rate of wage or salary to be paid the applicant, amount of the employment agency's fee, dates and amounts of refund, if any, and reason for such refund, and the contract agreed to between the agency and applicant.

(2) Unless otherwise provided by rules adopted by the director, such records shall be maintained for a period of 3 years from the date in which they are made.

History: En. Sec. 3, Ch. 430, L. 1971; R.C.M. 1947, 41-1419(part).

Cross-References
"Director" defined, 39-5-102.
"Employer" defined, 39-5-102.
"Employment agency" defined, 39-5-102.
"Person" defined, 39-5-102.

39-5-302. Applicant to receive contract — required contents of contract. An employment agency shall provide each applicant with a copy of the contract between the applicant and employment agency. Such contract shall contain the following:

(1) the name, address, and telephone number of the employment agency;

(2) trade name, if any;

(3) the date of the contract;

(4) the name of the applicant;

(5) the amount of the fee to be charged the applicant;

(6) a notice in eight-point boldface type or larger directly above the space reserved in the contract for the signature of the buyer. The caption, "NOTICE TO APPLICANT — READ BEFORE SIGNING" shall precede the body of the notice and shall be in ten-point boldface type or larger. The notice shall read as follows: "This is a contract. If you accept employment with any employer through (name of employment agency), you will be liable for the payment of the fee as set out above. Do not sign this contract before you read it or if any spaces intended for the agreed terms are left blank. You are entitled to a copy of this contract at the time you sign it."

History: En. Sec. 4, Ch. 430, L. 1971; R.C.M. 1947, 41-1420.

Cross-References
"Applicant" defined, 39-5-102.
"Employer" defined, 39-5-102.
"Employment agency" defined, 39-5-102.

39-5-303. Regulation of fees — disapproval of contract. (1) The fee charged by any employment agency for its services will be a percentage of the first full month's gross income of any person placed in employment, as provided for in the agency's fee schedule. The percentage charged must be determined by the agency and is not subject to disapproval by the director.

(2) No applicant may be required to pay more than one fee per placement.

(3) No employment agency may impose a fee in excess of that agreed to in writing.

(4) A fee schedule must be printed on all contracts, and a copy of the contract containing the fee schedule must be given to each applicant prior to any discussion of available employment.

(5) Prior to using any contract in the transaction of its business with applicants, each employment agency shall obtain the director's approval for the use of such contract. The director shall disapprove any proposed contract which either tends to be or is vague, deceitful, or misrepresentative.

History: En. Sec. 5, Ch. 430, L. 1971; R.C.M. 1947, 41-1421(part); amd. Sec. 1, Ch. 365, L. 1981; amd. Sec. 1, Ch. 339, L. 1983.

Compiler's Comments

1983 Amendment: In (1) substituted present first sentence for: "The fee charged by any employment agency for its services must be based on a percentage of the income of the applicant during his first year of employment."

1981 Amendment: Inserted subsections (1) through (4) before the existing language designated as (5); deleted "or attempts to charge an unreasonable fee or is in violation of this chapter" from the end of (5); made minor changes in grammar.

Cross-References

"Applicant" defined, 39-5-102.

"Director" defined, 39-5-102.

"Employment agency" defined, 39-5-102.

39-5-304. False or fraudulent advertisement prohibited — disclosure requirements of advertisement. No employment agency shall knowingly cause to be printed or published a false or fraudulent notice or advertisement for obtaining work or employment. All advertising by a licensee shall signify that it is an employment agency solicitation.

History: En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(4).

Cross-References

"Employment agency" defined, 39-5-102.

39-5-305. Agency not to induce employee to quit or employer to discharge. No licensee or agent of the licensee shall solicit, persuade, or induce an employee to leave any employment in which the licensee or agent of the licensee has placed the employee, nor shall any licensee or agent of the licensee persuade or induce or solicit any employer to discharge any employee.

History: En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(3).

Cross-References

"Employer" defined, 39-5-102.

39-5-306. Agency not to refer applicant where strike or lockout exists. No licensee shall refer an applicant to an employer where there is a strike or lockout at the place of proposed employment if such licensee has knowledge that such condition exists.

History: En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(5).

Cross-References

"Applicant" defined, 39-5-102.

"Employer" defined, 39-5-102.

39-5-307. Agency to reconfirm job opening. Prior to referring an applicant with the prospective employer for employment, the employment agency shall reconfirm that the job opening does still exist and document this on the job order.

History: **En. Sec. 6, Ch. 430, L. 1971; amd. Sec. 2, Ch. 237, L. 1975; R.C.M. 1947, 41-1422.**

Cross-References

"Applicant" defined, 39-5-102.

"Employer" defined, 39-5-102.

"Employment agency" defined, 39-5-102.

39-5-308. When agency may charge a fee. (1) No employment agency shall charge or accept a fee or other consideration from an applicant without complying with the terms of a written contract as specified in 39-5-302 and then only after such agency has been responsible for referring such job applicant to an employer or such employer to a job applicant and where as a result thereof such job applicant has been employed by such employer.

(2) No fee shall be solicited or accepted as an application or registration fee by any employment agency solely for the purpose of being registered as an applicant for employment.

(3) No fee shall be charged an applicant referred to a state employment office or any organization having exclusive hiring hall procedures as provided in the National Labor Relations Act.

History: **(1)En. Sec. 15, Ch. 430, L. 1971; Sec. 41-1431, R.C.M. 1947; (2)En. Sec. 17, Ch. 430, L. 1971; Sec. 41-1433, R.C.M. 1947; (3)En. Sec. 5, Ch. 430, L. 1971; Sec. 41-1421, R.C.M. 1947; R.C.M. 1947, 41-1421(part), 41-1431, 41-1433(2).**

Cross-References

"Applicant" defined, 39-5-102.

"Employer" defined, 39-5-102.

"Employment agency" defined, 39-5-102.

39-5-309. Repealed. Sec. 4, Ch. 365, L. 1981.

History: **En. 41-1431.1 by Sec. 1, Ch. 237, L. 1975; R.C.M. 1947, 41-1431.1(1), (2).**

39-5-310. Payment of fee when applicant referred by two agencies. When an applicant is referred to the same position by two employment agencies, the fee shall be paid to the agency that first contacted the applicant concerning the specific opening, provided that such agency has given the name of the employer to the applicant and has arranged an interview or submitted a resume to the employer within 10 days of such contact with the applicant.

History: **En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(7); amd. Sec. 2, Ch. 365, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "employment agencies" for "licensees" after "referred to the same position by two"; substituted "agency that" for "licensee who" before "first contacted the applicant"; substituted "such agency" for "he" before "has given the name"; substituted "contact with the applicant" for "contract" at the end of the section.

Cross-References

"Applicant" defined, 39-5-102.

"Employer" defined, 39-5-102.

39-5-311. Fees to be returned in certain cases. (1) Where an applicant for employees or employment who has paid a fee fails to secure or refuses to accept employees or employment, such fee shall be returned in cash within 7 days after demand.

(2) If employment obtained for an applicant ends in less than 100 calendar days from the first day of employment, regardless of the reason, the fee charged by the agency will be reduced by 1% of the fee for each calendar day remaining of the 100 days.

(3) Any employment agency which collects, receives, or retains a fee or other payment contrary to the provisions of this chapter or to the rules adopted pursuant to this chapter shall return the excessive portion of the fee within 7 days after receiving a demand therefor from the director.

History: (1), (2)En. 41-1431.1 by Sec. 1, Ch. 237, L. 1975; Sec. 41-1431.1, R.C.M. 1947; (3)En. Sec. 16, Ch. 430, L. 1971; Sec. 41-1432, R.C.M. 1947; R.C.M. 1947, 41-1431.1(3), 41-1432; amd. Sec. 3, Ch. 365, L. 1981.

Compiler's Comments

1981 Amendment: Substituted the language in (2) for "Where, due to no fault of such applicant or because the employee or employment is other than as represented by the employment agency, employment is discontinued within 30 days, then all fees paid pursuant to 39-5-309 by such applicant in excess of the applicable maximum for the period worked shall be returned in cash within 7 days after demand."

Cross-References

"Applicant" defined, 39-5-102.
"Director" defined, 39-5-102.
"Employment agency" defined, 39-5-102.

39-5-312. Agency not to share fees with employer. No licensee or agent of a licensee shall directly or indirectly split, divide, or share with an employer any fee, charge, or compensation received from any applicant who has obtained employment with such employer or with any other person connected with the business of such employer.

History: En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(6).

Cross-References

"Applicant" defined, 39-5-102.
"Employer" defined, 39-5-102.
"Person" defined, 39-5-102.

Part 4

Investigations and Enforcement

39-5-401. Investigative powers of director. (1) The director shall have supervisory and investigative authority over all employment agencies. Upon receiving a complaint against any employment agency, the director shall have the right to examine all books, documents, or records in its possession. In addition, the director may examine the office or offices where business is or shall be conducted by such agency.

(2) The director shall have power to compel the attendance of witnesses by the issuance of subpoenas, to administer oaths, and to take testimony and proofs concerning all matters pertaining to the administration of this chapter.

(3) The director shall have authority to demand and examine at the employment agency's regular place of business all books, documents, and records in its possession for inspection.

History: (1), (2)En. Sec. 7, Ch. 430, L. 1971; Sec. 41-1423, R.C.M. 1947; (3)En. Sec. 3, Ch. 430, L. 1971; Sec. 41-1419, R.C.M. 1947; R.C.M. 1947, 41-1419(part), 41-1423(2), (3).

Cross-References

"Director" defined, 39-5-102.
"Employment agency" defined, 39-5-102.

39-5-402. Department to forward complaints to agency involved or agency association. Any complaints filed with the department of labor and industry shall be sent to that private employment agency involved or to the Montana private employment agency association.

History: En. 41-1434.1 by Sec. 4, Ch. 237, L. 1975; R.C.M. 1947, 41-1434.1.

Cross-References

"Employment agency" defined, 39-5-102.

39-5-403. Referral of violations to prosecuting attorneys — restraining actions. The director may refer such evidence as may be available to him concerning violations of this chapter or of any rule adopted hereunder to the attorney general or the county attorney of the county wherein the alleged violation arose who may, in his discretion, with or without such a reference, in addition to any other action he might commence, bring an action in the name of the state against any person to restrain and prevent the doing of any act or practice prohibited by this chapter.

History: En. Sec. 18, Ch. 430, L. 1971; R.C.M. 1947, 41-1434; amd. Sec. 27, Ch. 397, L. 1979.

Cross-References
"Director" defined, 39-5-102.
"Person" defined, 39-5-102.

39-5-404. Written assurance of discontinuance. In the enforcement of this chapter, the attorney general or the county attorney may accept an assurance of discontinuance from any person deemed in violation of any provisions of this chapter. Any such assurance shall be in writing and shall be filed with and subject to the approval of the district court of the county in which the alleged violator resides or has his principal place of business.

History: En. Sec. 19, Ch. 430, L. 1971; R.C.M. 1947, 41-1435; amd. Sec. 28, Ch. 397, L. 1979.

Cross-References
"Person" defined, 39-5-102.

39-5-405. Civil penalty for violating court order. Any person who violates the terms of any court order or temporary or permanent injunction issued pursuant to this chapter shall forfeit and pay a civil penalty of not more than $2,000. For the purpose of this section, the court issuing any injunction shall retain continuing jurisdiction and in such cases the attorney general or the county attorney acting in the name of the state may petition for the recovery of civil penalties.

History: En. Sec. 20, Ch. 430, L. 1971; R.C.M. 1947, 41-1436; amd. Sec. 29, Ch. 397, L. 1979.

Cross-References
"Person" defined, 39-5-102.

39-5-406. Jurisdiction over nonresidents. Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has engaged in conduct in violation of this chapter, which conduct has had impact in this state which this chapter reprehends. Such person shall be deemed to have thereby submitted himself to the jurisdiction of the courts of this state.

History: En. Sec. 21, Ch. 430, L. 1971; R.C.M. 1947, 41-1437.

Cross-References
"Person" defined, 39-5-102.

CHAPTER 6

APPRENTICESHIP

Part 1 — General Provisions

Section
39-6-101. Duties of department.
39-6-102. Powers of department.

39-6-103. Responsibilities of state and local boards responsible for vocational education.
39-6-104. Local and state joint apprenticeship committees.
39-6-105. Apprenticeship agreements.
39-6-106. Contents of apprenticeship agreements — credit for prior training or experience.
39-6-107. Provisions of chapter voluntary.

Part 1

General Provisions

39-6-101. Duties of department. (1) The department of labor and industry shall:

(a) encourage and promote the making of apprenticeship agreements conforming to the standards established by or in accordance with this chapter;

(b) register such apprenticeship agreements as are in the best interests of the apprenticeship and conform to the standards established by or in accordance with this chapter;

(c) keep a record of apprenticeship agreements and, upon performance thereof, issue certificates of completion of apprenticeship;

(d) terminate or cancel any apprenticeship agreements in accordance with the provisions of such agreements; and

(e) provide assistance for the development of on-the-job training programs in nonapprenticeable occupations;

(f) establish standards for apprenticeship agreements in conformity with the provisions of this chapter;

(g) issue such rules as may be necessary to carry out the intent and purposes of this chapter; and

(h) perform such other duties as may be required by federal regulations, provided that such federal regulations are not in conflict with this chapter.

(2) Not less than once every 2 years, the department shall make a report through the governor of its activities and findings to the legislature, which shall be made available to the public.

History: Ap.p. Sec. 2, Ch. 149, L. 1941; amd. Sec. 2, Ch. 183, L. 1957; amd. Sec. 2, Ch. 160, L. 1963; Sec. 41-1202, R.C.M. 1947; Ap.p. Sec. 1, Ch. 149, L. 1941; amd. Sec. 1, Ch. 99, L. 1947; amd. Sec. 1, Ch. 183, L. 1957; amd. Sec. 1, Ch. 160, L. 1963; amd. Sec. 16, Ch. 439, L. 1975; Sec. 41-1201, R.C.M. 1947; R.C.M. 1947, 41-1201(b), 41-1202(1) thru (4); amd. Sec. 1, Ch. 272, L. 1979.

39-6-102. Powers of department. (1) The department of labor and industry may accept from the federal government or any agency thereof or from any state agency any funds made available to carry out purposes within the scope of the activities and purposes of the department under this chapter and to use such funds as said department may direct for the purposes for which said funds are made available.

(2) The department may act to bring about the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure.

History: (1)En. Sec. 1, Ch. 149, L. 1941; amd. Sec. 1, Ch. 99, L. 1947; amd. Sec. 1, Ch. 183, L. 1957; amd. Sec. 1, Ch. 160, L. 1963; amd. Sec. 16, Ch. 439, L. 1975; Sec. 41-1201, R.C.M. 1947; (2)En. Sec. 2, Ch. 149, L. 1941; amd. Sec. 2, Ch. 183, L. 1957; amd. Sec. 2, Ch. 160, L. 1963; Sec. 41-1202, R.C.M. 1947; R.C.M. 1947, 41-1201(c), 41-1202(part(5)).

39-6-103. Responsibilities of state and local boards responsible for vocational education. Related and supplemental instruction for apprentices, coordination of instruction with job experiences, and the selection and training of teachers and coordinators for such instruction shall be the responsibility of state and local boards responsible for vocational education.

History: En. Sec. 2, Ch. 149, L. 1941; amd. Sec. 2, Ch. 183, L. 1957; amd. Sec. 2, Ch. 160, L. 1963; R.C.M. 1947, 41-1202(part).

39-6-104. Local and state joint apprenticeship committees. (1) Local and state joint apprenticeship committees may be approved in any trade or group of trades in cities or trade areas by the department of labor and industry whenever the apprentice training needs of such trade or group of trades justifies such establishment.

(2) Such local or state joint apprenticeship committees shall be composed of an equal number of employer and employee representatives chosen from names submitted by the respective local or state employer and employee organizations in such trade or group of trades. In a trade or group of trades in which there is no bona fide employer or employee organization, the joint committee shall be composed of persons known to represent the interests of employers and of employees, respectively, or a state joint apprenticeship committee may be approved as or the department may act itself as the joint committee in such trade or group of trades.

(3) Subject to the review of the department and in accordance with the standards established by this chapter and by the department, such committee shall devise standards for apprenticeship agreements and give such aid as may be necessary in their operation in their respective trades and localities.

History: En. Sec. 3, Ch. 149, L. 1941; R.C.M. 1947, 41-1203.

39-6-105. Apprenticeship agreements. (1) For the purpose of this chapter, an apprenticeship agreement is:

(a) an individual written agreement between an employer and apprentice;

(b) a written agreement between an employer or an association of employers and an organization of employees describing conditions of employment for apprentices; or

(c) a written statement describing conditions of employment for apprentices in a plant where there is no bona fide employee organization.

(2) All such agreements shall conform to the basic standards and other provisions of this chapter.

History: En. Sec. 5, Ch. 149, L. 1941; R.C.M. 1947, 41-1205.

39-6-106. Contents of apprenticeship agreements — credit for prior training or experience. (1) Apprenticeship agreements shall contain:

(a) a statement of the trade or craft to be taught and the required hours for completion of apprenticeship, which must be not less than 2,000 hours of reasonably continuous employment;

(b) a statement of the processes in the trade or craft divisions in which the apprentice is to be taught and the approximate amount of time to be spent at each process;

(c) a statement of the number of hours to be spent by the apprentice in related and supplemental instruction, which is recommended to be 144 hours per year;

(d) a statement that apprentices must be not less than 16 years of age;

(e) a statement of the progressively increasing scale of wages to be paid the apprentice;

(f) provision for a period of probation during which the department of labor and industry must terminate an apprenticeship agreement at the request in writing of any party thereto. After the probationary period, the department may terminate the registration of an apprentice upon agreement of the parties.

(g) provision that the services of the department may be utilized for consultation regarding the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure;

(h) provision that if an employer is unable to fulfill his obligation under the apprenticeship agreement, he may transfer the obligation to another employer if the other employer has been approved as a training facility;

(i) provision for the specification of the ratio of apprentices to journeymen. The department will continue to honor and recognize ratio provisions as established in existing labor/management bargaining agreements or as established by an industry practice.

(j) such additional standards as may be prescribed in accordance with this chapter.

(2) An apprentice who, prior to entering into an agreement, has had training or experience in the trade or craft in which he is employed as an apprentice may be granted full or partial credit for the training or experience on the recommendation of the employer or the joint apprenticeship committee and with the approval of the department.

History: En. Sec. 4, Ch. 149, L. 1941; R.C.M. 1947, 41-1204; amd. Sec. 2, Ch. 272, L. 1979; amd. Sec. 30, Ch. 397, L. 1979.

39-6-107. Provisions of chapter voluntary. The provisions of this chapter shall apply to a person, firm, corporation, or craft only after such person, firm, corporation, or craft has voluntarily elected to conform with its provisions.

History: En. Sec. 6, Ch. 149, L. 1941; R.C.M. 1947, 41-1206.

CHAPTER 7

WOMEN IN EMPLOYMENT
DISPLACED HOMEMAKERS

Part 1 — Duties of Department of Labor and Industry

Section
39-7-101. Legislative policy.
39-7-102. Rules of procedure and practice.
39-7-103. Duties of department.
39-7-104. Department to work in close cooperation with commission on human rights.

Part 2 — Maternity Leave
(Repealed and Renumbered.
Sec. 2, 3, Ch. 285, L. 1983)

Part 3 — Displaced Homemakers

39-7-301. Short title.
39-7-302. Purpose.
39-7-303. Definitions.
39-7-304. Multipurpose service programs for displaced homemakers — administrators.
39-7-305. Programs to aid displaced homemakers.
39-7-306. Rulemaking duties of commissioner.
39-7-307. Acceptance of funds by administrator of local program.
39-7-308. Evaluation of multipurpose service programs — reports to the commissioner.
39-7-309. Staff of service programs.
39-7-310. Partial funding from local community.

Part 1

Duties of Department of Labor and Industry

39-7-101. Legislative policy. This part establishes as an affirmative policy of this state within the department of labor and industry procedures which will enable women to contribute to society according to their fullest possible potential.

History: En. Sec. 1, Ch. 466, L. 1973; R.C.M. 1947, 41-2401.

39-7-102. Rules of procedure and practice. The commissioner of the department of labor and industry may issue rules of procedure and practice consistent with the Montana Administrative Procedure Act in order to administer and carry out the purposes of this part.

History: En. Sec. 3, Ch. 466, L. 1973; R.C.M. 1947, 41-2403.

39-7-103. Duties of department. The department of labor and industry shall:

(1) conduct studies about the changing employment needs and problems of women in Montana and make recommendations to the governor and the legislature;

(2) direct public attention to critical employment problems confronting women as wives, mothers, homemakers, and workers;

(3) serve as a clearinghouse for information and materials pertinent to programs and services available to assist and advise women on employment and related matters;

(4) cooperate with governmental departments and agencies primarily involved in curbing job discrimination and in the expansion of employment rights and opportunities available to the women of this state;

(5) conduct periodic conferences throughout the state to make women more aware of employment opportunities, programs, and services available to them;

(6) serve as the central, permanent agency for the coordination and evaluation of employment programs and services for women of the state and as a planning agency for the development of those services;

(7) encourage women's organizations and other groups to institute local self-help activities designed to meet women's employment and related needs;

(8) apply for and receive grants, appropriations, or gifts from any federal, state, or local agency, private foundation, or individual to carry out the purposes of this part.

History: En. Sec. 2, Ch. 466, L. 1973; R.C.M. 1947, 41-2402.

39-7-104. Department to work in close cooperation with commission on human rights. It is the intent of the legislature that the functions in the department of labor and industry delineated in this part pertaining to the status of women shall, where appropriate, be performed in close cooperation with the commission on human rights.

History: En. Sec. 2, Ch. 478, L. 1975.

Part 2

Maternity Leave (Repealed and Renumbered. Sec. 2, 3, Ch. 285, L. 1983)

Part Compiler's Comments

Histories of Repealed Sections:

39-7-201. En. 41-2601 by Sec. 1, Ch. 320, L. 1975; R.C.M. 1947, 41-2601.

39-7-202. En. 41-2605 by Sec. 5, Ch. 320, L. 1975; R.C.M. 1947, 41-2605.

39-7-205. En. 41-2603 by Sec. 3, Ch. 320, L. 1975; R.C.M. 1947, 41-2603(part).

39-7-206. En. 41-2604 by Sec. 4, Ch. 320, L. 1975; R.C.M. 1947, 41-2604.

39-7-207. En. 41-2603 by Sec. 3, Ch. 320, L. 1975; R.C.M. 1947, 41-2603(part).

39-7-208. En. 41-2606 by Sec. 6, Ch. 320, L. 1975; R.C.M. 1947, 41-2606.

39-7-209. En. Sec. 1, Ch. 286, L. 1979.

Histories of Renumbered Sections:

39-7-203. Renumbered 49-2-310.

39-7-204. Renumbered 49-2-311.

Part 3

Displaced Homemakers

39-7-301. Short title. This part may be cited as the "Displaced Homemaker Act".

History: En. Sec. 1, Ch. 709, L. 1983.

39-7-302. Purpose. It is the intent of the legislature to provide necessary counseling, training, jobs, services, and health care for displaced homemakers so they may achieve independence and the economic security vital to a productive life.

History: En. Sec. 2, Ch. 709, L. 1983.

39-7-303. Definitions. As used in this part, the following definitions apply:

(1) "Commissioner" means the commissioner of labor and industry as provided in 2-15-1701.

(2) "Displaced homemaker" means an individual who:

(a) has worked in the home for at least 3 years providing unpaid household services for family members;

(b) is not gainfully employed or is underemployed;

(c) has had or would have difficulty securing paid employment; and

(d) was dependent on the income of another family member but is no longer supported by such income, was dependent on federal assistance but is no longer eligible for such assistance, or whose eligibility for such federal assistance will be terminated within 6 months.

History: **En. Sec. 3, Ch. 709, L. 1983.**

39-7-304. Multipurpose service programs for displaced homemakers — administrators. (1) The commissioner may establish multipurpose service programs for displaced homemakers and may enter into contracts with and make grants to nonprofit agencies or organizations, public or private, to establish, organize, and administer the programs described in 39-7-305.

(2) The commissioner shall contract with an administrator for each program.

History: **En. Sec. 4, Ch. 709, L. 1983.**

39-7-305. Programs to aid displaced homemakers. (1) The programs must be developed in cooperation with federal, state, and local agencies and with private employers in order to coordinate efforts directed toward enabling the displaced homemaker to maintain economic security and emotional well-being and to avoid unnecessary duplication of services.

(2) The services may include but are not limited to:

(a) job counseling services that are:

(i) specifically designed for displaced homemakers by taking into account and building upon their skills and experiences; and

(ii) operated to counsel displaced homemakers with respect to appropriate job opportunities;

(b) job training and job placement services that:

(i) include training and placement programs for jobs in the public and private sectors;

(ii) assist displaced homemakers in gaining admission to existing public or private job training and educational programs; and

(iii) assist in identifying community needs and creating new jobs in the public and private sectors;

(c) referral to or development of programs for displaced homemakers in cooperation with local agencies that provide information and assistance with respect to health care, financial matters, education, nutrition, and legal problems;

(d) support services, such as:

(i) child care for preschool children;

(ii) transportation assistance; and

(iii) grants for education; and

(e) development of outreach programs to serve rural areas where needs for such programs have been identified.

History: **En. Sec. 5, Ch. 709, L. 1983.**

39-7-306. Rulemaking duties of commissioner. The commissioner, with the advice of other organizations and agencies who provide services to displaced homemakers, shall adopt rules:

(1) concerning the eligibility of persons who may be served by the program;

(2) concerning a graduated fee schedule for program services;

(3) concerning criteria for making grants as provided for in 39-7-304; and

(4) necessary to carry out the provisions of this part.

History: **En. Sec. 6, Ch. 709, L. 1983.**

39-7-307. Acceptance of funds by administrator of local program. The administrator of the local displaced homemaker program may accept, use, and dispose of all grants or contributions of money, services, and property for the purpose of carrying out the provisions of this part. Such grants or contributions may include grants or in-kind contributions from a local governmental unit.

History: **En. Sec. 7, Ch. 709, L. 1983.**

39-7-308. Evaluation of multipurpose service programs — reports to the commissioner. The administrator of each designated program established under this part shall report annually to the commissioner as prescribed by rule, which report must include:

(1) an evaluation of the effectiveness of the program's job counseling, training, placement referral, support, and outreach services to displaced homemakers; and

(2) an accounting of all expenditures.

History: **En. Sec. 8, Ch. 709, L. 1983.**

39-7-309. Staff of service programs. To the extent possible, supervisory, technical, and administrative positions in the multipurpose service programs must be filled by displaced homemakers.

History: **En. Sec. 9, Ch. 709, L. 1983.**

39-7-310. Partial funding from local community. Fifteen percent of the operational costs of a local displaced homemaker program must come from the local community served by the program. The local contribution may include in-kind contributions.

History: **En. Sec. 10, Ch. 709, L. 1983.**

CHAPTERS 8 THROUGH 29

RESERVED

CHAPTER 30

VETERANS' AND HANDICAPPED PERSONS' PUBLIC EMPLOYMENT PREFERENCE

Part 1 — General Provisions

Section
39-30-101. Short title.
39-30-102. Purposes.

39-30-103. Definitions.
39-30-104 and 39-30-105 reserved.
39-30-106. Adoption of rules.
39-30-107. Certification of handicapped persons.
39-30-108. No application if conflict with federal law.

Part 2 — Operative Provisions

39-30-201. Employment preference in initial hiring.
39-30-202. Eligibility requirements.
39-30-203. Duration of preference.
39-30-204 and 39-30-205 reserved.
39-30-206. Notice and claim of preference.
39-30-207. Enforcement of preference.

Chapter Compiler's Comments

Effective Date — Applicability — Retroactive Repealer of Former Veterans' and Disabled Civilians' Employment Preference Law: Section 16, Ch. 1, Sp. L. 1983, read: "(1) This act is effective on passage and approval. [Approved December 20, 1983.]

(2) Except as provided in section 14, this act applies only to positions that are filled after the effective date of this act."

Section 14, Ch. 1, Sp. L. 1983, read: "Sections 10-2-201 through 10-2-206, MCA, are repealed. This repeal applies retroactively to bar any claim of violation or application of 10-2-201 through 10-2-206 that has not been reduced to judgment, whether or not the judgment is final, on the effective date of this act [December 20, 1983]. Claims under 10-2-201 through 10-2-206 that have been reduced to judgment, whether or not the judgment is final, on the effective date of this act are enforceable. No claim for a violation of 10-2-201 through 10-2-206 may be made under section 8 of this act [39-30-206 and 39-30-207]."

Part 1

General Provisions

39-30-101. Short title. This chapter may be cited as the "Montana Veterans' and Handicapped Persons' Employment Preference Act".

History: En. Sec. 1, Ch. 1, Sp. L. 1983.

39-30-102. Purposes. The purposes of this chapter are to recognize veterans and disabled veterans for service to their country, recognize past employment discrimination against handicapped persons, and facilitate the habilitation, rehabilitation, and readjustment of veterans, disabled veterans, and handicapped persons.

History: En. Sec. 2, Ch. 1, Sp. L. 1983.

39-30-103. Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Active duty" means full-time duty other than for training in the regular components of the United States army, air force, navy, marine corps, or coast guard with full pay and allowances. The term does not include monthly drills, summer encampments, initial training, or other inactive or active duty for training in the national guard or reserves.

(2) "Disabled veteran" means an individual, whether or not he is a veteran as defined in this section, who:

(a) served on active duty;

(b) has been separated from service by honorable discharge; and

(c) suffers a service-connected disability determined by the United States veterans administration to be 30% or more disabling.

(3) "Eligible spouse" means:

(a) the unremarried surviving spouse of a veteran who died while on active duty or whose death resulted from a service-connected disability; or

(b) the spouse of:

(i) a disabled veteran determined by the United States veterans administration to have a 100% service-connected disability who is unable to use his employment preference because of his disability;

(ii) a person on active duty determined by the United States government to be missing in action or a prisoner of war; or

(iii) a handicapped person determined by the department of social and rehabilitation services to have a 100% disability who is unable to use his employment preference because of his disability.

(4) "Handicapped person" means an individual certified by the department of social and rehabilitation services to have a physical or mental impairment that substantially limits one or more major life activities, such as writing, seeing, hearing, speaking, or mobility, and which limits the individual's ability to obtain, retain, or advance in employment.

(5) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the ranks of the current employees of:

(i) a department, as defined in 2-15-102, for a position within the executive branch;

(ii) a legislative agency, such as the consumer counsel, environmental quality council, office of the legislative auditor, legislative council, or office of the legislative fiscal analyst, for a position within the legislative branch;

(iii) a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;

(iv) a city or town for a municipal position, including a city or municipal court position; and

(v) a county for a county position, including a justice's court position.

(b) A personnel action limited to current employees of a specific public entity identified in subsections (a)(i) through (a)(v) of this subsection (5), current employees in a reduction-in-force pool who have been laid off from a specific public entity identified in subsections (a)(i) through (a)(v) of this subsection (5), or current participants in a federally authorized employment program is not an initial hiring.

(6) (a) "Mental impairment" means:

(i) suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; or

(ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term mental impairment does not include alcoholism or drug addiction and does not include any mental impairment, disease, or defect that has been asserted by the individual claiming the preference as a defense to any criminal charge.

(7) "Position" means a permanent or seasonal position as defined in 2-18-101 for a state position or a similar permanent or seasonal position with a public employer other than the state. However, the term does not include:

(a) a temporary position as defined in 2-18-101 for a state position or similar temporary position with a public employer other than the state;

(b) a state or local elected official;

(c) employment as an elected official's immediate secretary, legal advisor court reporter, or administrative, legislative, or other immediate or first-line aide;

(d) appointment by an elected official to a body such as a board, commission, committee, or council;

(e) appointment by an elected official to a public office if the appointment is provided for by law;

(f) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

(g) engagement as an independent contractor or employment by an independent contractor.

(8) (a) "Public employer" means:

(i) any department, office, board, bureau, commission, agency, or other instrumentality of the executive, judicial, or legislative branch of the government of the state of Montana; and

(ii) any county, city, or town.

(b) The term does not include a school district, a postsecondary vocational-technical center or program, a community college, the board of regents of higher education, the Montana university system, a special purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

(9) "Substantially equal qualifications" means the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons.

(10) (a) "Veteran" means a person who:

(i) served on active duty during time of war or declared national emergency or in a campaign or expedition for which a campaign badge was authorized by the United States congress or the United States department of defense; and

(ii) has been separated from service by honorable discharge.

(b) The term does not include a retired member of the United States armed forces who is eligible for or receiving a military retirement allowance based on length of service and does not include any other retired member of a public retirement system, except social security, that is supported in whole or in part by tax revenues.

(11) "War or declared national emergency" means:

(a) World War I, beginning on April 6, 1917, and ending on November 11, 1918, both dates inclusive;

(b) World War II, beginning on December 7, 1941, and ending on December 31, 1946, both dates inclusive;

(c) the Korean conflict, military expedition, or police action, beginning on June 27, 1950, and ending on January 31, 1955, both dates inclusive; and

(d) the Vietnam conflict, beginning on August 5, 1964, and ending on May 7, 1975, both dates inclusive.

History: **En. Sec. 3, Ch. 1, Sp. L. 1983.**

Cross-References

Judiciary, Title 3.

Legislative Branch, Title 5.

"Developmentally disabled" defined similarly to "mental impairment", 53-20-102.

39-30-104 and 39-30-105 reserved.

39-30-106. Adoption of rules. The department of administration shall adopt rules implementing this chapter and shall consult with the department of social and rehabilitation services in adopting rules governing certification of handicapped persons for purposes of this chapter. The department of administration's rules apply to all public employers, local as well as state.

History: **En. Sec. 9, Ch. 1, Sp. L. 1983.**

Cross-References

Administrative rulemaking, Title 2, ch. 4, part 3.

39-30-107. Certification of handicapped persons. The department of social and rehabilitation services shall certify persons as handicapped for the purpose of employment preference as provided in this chapter.

History: **En. Sec. 6, Ch. 1, Sp. L. 1983.**

39-30-108. No application if conflict with federal law. This chapter does not apply to work or positions subject to federal laws or regulations if application of the employment preference conflicts with those laws or regulations.

History: **En. Sec. 10, Ch. 1, Sp. L. 1983.**

Cross-References

Supremacy clause, Art. VI, U.S. Const. (Federal Materials, MCA Annotations, Vol. 1).

Part 2

Operative Provisions

39-30-201. Employment preference in initial hiring. (1) (a) Except as provided in 10-2-402, in an initial hiring for a position, if a job applicant who is a veteran, disabled veteran, handicapped person, or eligible spouse meets the eligibility requirements contained in 39-30-202 and claims a preference as required by 39-30-206, a public employer shall hire the applicant over any other applicant with substantially equal qualifications who is not a preference eligible applicant.

(b) In an initial hiring, a public employer shall hire a disabled veteran or handicapped person over any other preference eligible applicant with substantially equal qualifications.

(2) The employment preference provided for in subsection (1) does no apply to a personnel action described in subsection (5)(b) of 39-30-103 or t any other personnel action that is not an initial hiring.

History: En. Sec. 4, Ch. 1, Sp. L. 1983.

Cross-References

Legislative grants of special considerations to veterans, Art. II, sec. 35, Mont. Const.

Reemployment of veteran on completion of service, Title 10, ch. 2, part 2.

Preference of Montana labor in public works 18-2-403.

Management rights of public employers 39-31-303.

Employment preference no violation of antidiscrimination laws, 49-2-405, 49-3-103.

39-30-202. Eligibility requirements. No veteran, disabled veteran, eligible spouse, or handicapped person is entitled to receive employment preference as provided in 39-30-201 unless:

(1) he is a United States citizen;

(2) he has resided continuously in the state for at least 1 year immediatel before applying for employment;

(3) if applying for municipal or county employment, he has resided for a least 30 days immediately before applying for employment in the city, town or county in which employment is sought; and

(4) he meets those requirements considered necessary by a publi employer to successfully perform the essential duties of the position for whic he is applying.

History: En. Sec. 5, Ch. 1, Sp. L. 1983.

Cross-References

Rules for determining residence, 1-1-215.

39-30-203. Duration of preference. Subject to 39-30-202:

(1) a handicapped person, the spouse of a handicapped person a described in subsection (3)(b)(iii) of 39-30-103, a disabled veteran, or th spouse of a disabled veteran as described in subsection (3)(b)(i) of 39-30-10 qualifies for employment preference as long as the disabling condition exists;

(2) a veteran, as defined in 39-30-103, who is not a disabled veteran, a defined in 39-30-103, qualifies for employment preference for no longer tha 15 years following separation from service or for no longer than 5 years following December 20, 1983, whichever is later.

(3) the surviving spouse of a veteran as described in subsection (3)(a) o 39-30-103 qualifies for employment preference for as long as the spous remains unmarried; and

(4) the spouse of a person described in subsection (3)(b)(ii) of 39-30-10 qualifies for employment preference for as long as the person is missing i action or a prisoner of war.

History: En. Sec. 7, Ch. 1, Sp. L. 1983.

39-30-204 and 39-30-205 reserved.

39-30-206. Notice and claim of preference. (1) A public employe shall, by posting or on the application form, give notice of the preference that this chapter provides in public employment.

(2) A job applicant who believes he has an employment preference shal claim the preference in writing before the time for filing applications for th

osition involved has passed. Failure to make a timely employment preference laim for a position is a complete defense to an action in regard to that posiion under 39-30-207.

(3) If an applicant for a position makes a timely written employment reference claim, the public employer shall give written notice of its hiring ecision to each applicant claiming preference.

History: **En. Sec. 8(1)-(3), Ch. 1, Sp. L. 1983.**

39-30-207. Enforcement of preference. (1) An applicant who believes e has not been accorded his rights under this chapter may, within 30 days f receipt of the notice of the hiring decision provided for in 39-30-206, ubmit to the public employer a written request for an explanation of the ublic employer's hiring decision. Within 15 days of receipt of the request, the ublic employer shall give the applicant a written explanation.

(2) The applicant may, within 90 days after receipt of notice of the hiring ecision, file a petition in the district court in the county in which his appliation was received by the public employer. The petition must state facts hich on their face entitle the applicant to an employment preference.

(3) (a) Upon filing of the petition, the court shall order the public mployer to appear in court at a specified time not less than 10 or more than 0 days after the day the petition was filed and show cause why the applicant as not hired for the position. At the hearing, the public employer has the urden of proving by a preponderance of the evidence that the employer ade a reasonable determination pursuant to subsection (9) of 39-30-103 and he applicant has the burden of proving by a preponderance of the evidence hat he is a preference eligible applicant.

(b) The time to appear provided in subsection (3)(a) may be waived by tipulation of the parties. If a time to appear has been specified pursuant to ubsection (3)(a), the court may, on motion of one of the parties or on stipuation of all of the parties, grant a continuance.

(c) If the public employer does not carry its burden of proof under subsecion (3)(a) and the court has found that the applicant is a preference eligible pplicant, the court shall order the public employer to reopen the selection rocess for the position involved and shall grant the applicant reasonable ttorney fees and court costs. The remedy provided by this section is the only emedy for a violation of this chapter, and a court may not grant any other elief in an action for violation of this chapter.

(4) Failure of an applicant to file a petition under subsection (2) within 0 days bars the filing of a petition. If a public employer fails to provide an xplanation under subsection (1) within 15 days and a petition is filed under ubsection (2), the court shall order the public employer to reopen the selecon process.

(5) The Montana Rules of Civil Procedure apply to a proceeding under is section to the extent that they do not conflict with this section.

History: **En. Sec. 8(4), Ch. 1, Sp. L. 1983.**

ross-References

Montana Rules of Civil Procedure, Title 25, . 20.

Evidence, Title 26.

CHAPTER 31

COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES

Part 1 — General Provisions

Section
39-31-101. Policy.
39-31-102. Chapter not a limit on legislative authority.
39-31-103. Definitions.
39-31-104. Rules.
39-31-105. Administrative procedure act applicable.
39-31-106. Board authorized to subpoena witnesses and administer oaths.
39-31-107. Service of subpoenas, notices of hearing, and other process.
39-31-108. Counsel for public parties to litigation.
39-31-109. Existing collective bargaining agreements not affected.

Part 2 — Public Employee Self-Organization and Certification of Bargaining Representative

39-31-201. Public employees protected in right of self-organization.
39-31-202. Board to determine appropriate bargaining unit — factors to be considered.
39-31-203. Deduction of dues from employee's pay.
39-31-204. Right of nonassociation with labor organization on religious grounds — requirement and procedure for assertion of right.
39-31-205. Designated labor organizations to represent employees without discrimination.
39-31-206. Labor organization to guarantee certain rights and safeguards prior to certificatio or recognition.
39-31-207. Petition on representation question — investigation by board — hearing.
39-31-208. Representation election at direction of board.
39-31-209. Consent election.
39-31-210. Election in twelve-month period following valid election prohibited.
39-31-211. Labor organizations representing employees of the board to be unaffiliated.

Part 3 — Bargaining

39-31-301. Representative of public employer.
39-31-302. Participation by student representative when public employer is board of regents.
39-31-303. Management rights of public employers.
39-31-304. Negotiable items for school districts.
39-31-305. Duty to bargain collectively — good faith.
39-31-306. Collective bargaining agreements.
39-31-307. Mediation of disputes.
39-31-308. Initiation of factfinding — designation of fact finder.
39-31-309. Factfinding proceedings.
39-31-310. Submission of issues to arbitration.
39-31-311. Training of fact finders and arbitrators.
39-31-312. Nonnegotiable items for state prison.

Part 4 — Unfair Labor Practices

39-31-401. Unfair labor practices of public employer.
39-31-402. Unfair labor practices of labor organization.
39-31-403. Remedies for unfair labor practices.
39-31-404. Six-month limitation on unfair labor practice complaint — exception.
39-31-405. Unfair labor practice complaint — investigation — notice of hearing — service - answer.
39-31-406. Hearing on complaint — findings — order.
39-31-407. Amendment of complaint.
39-31-408. Modification by board of findings and order.
39-31-409. Court enforcement and review of board order.

Chapter Cross-References

Youth Conservation Corps project for job covered by collective bargaining agreement, 76-21-301.

Part 1

General Provisions

39-31-101. Policy. In order to promote public business by removing certain recognized sources of strife and unrest, it is the policy of the state of Montana to encourage the practice and procedure of collective bargaining to arrive at friendly adjustment of all disputes between public employers and their employees.

History: En. Sec. 1, Ch. 441, L. 1973; R.C.M. 1947, 59-1601.

39-31-102. Chapter not a limit on legislative authority. This chapter does not limit the authority of the legislature, any political subdivision, or the governing body relative to appropriations for salary and wages, hours, fringe benefits, and other conditions of employment.

History: En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(5).

39-31-103. Definitions. When used in this chapter, the following definitions apply:

(1) "Public employer" means the state of Montana or any political subdivision thereof, including but not limited to any town, city, county, district, chool board, board of regents, public and quasi-public corporation, housing uthority or other authority established by law, and any representative or gent designated by the public employer to act in its interest in dealing with public employees.

(2) (a) "Public employee" means:

(i) except as provided in subsection (2)(b) of this section, a person mployed by a public employer in any capacity; and

(ii) an individual whose work has ceased as a consequence of or in connection with any unfair labor practice or concerted employee action.

(b) "Public employee" does not mean:

(i) an elected official;

(ii) a person directly appointed by the governor;

(iii) a supervisory employee, as defined in subsection (3) of this section;

(iv) a management official, as defined in subsection (4) of this section;

(v) a confidential employee, as defined in subsection (12) of this section;

(vi) a member of any state board or commission who serves the state intermittently;

(vii) a school district clerk;

(viii) a school administrator;

(ix) a registered professional nurse performing service for a health care facility;

(x) a professional engineer; or

(xi) an engineer-in-training.

(3) "Supervisory employee" means any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline other employees, having responsibility to direct them, to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

(4) "Management official" means a representative of management having authority to act for the agency on any matters relating to the implementation of agency policy.

(5) "Labor organization" means any organization or association of any kind in which employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, fringe benefits, or other conditions of employment.

(6) "Exclusive representative" means the labor organization which has been designated by the board as the exclusive representative of employees in an appropriate unit or has been so recognized by the public employer.

(7) "Board" means the board of personnel appeals provided for in 2-15-1705.

(8) "Person" includes one or more individuals, labor organizations, public employees, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(9) "Unfair labor practice" means any unfair labor practice listed in 39-31-401 or 39-31-402.

(10) "Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(11) "Appropriate unit" means a group of public employees banded together for collective bargaining purposes as designated by the board.

(12) "Confidential employee" means any person found by the board to be a confidential labor relations employee and any person employed in the personnel division, department of administration, who acts with discretionary authority in the creation or revision of state classification specifications.

History: En. Sec. 2, Ch. 441, L. 1973; amd. Sec. 1, Ch. 117, L. 1975; amd. Sec. 1, Ch. 384, L. 1975; R.C.M. 1947, 59-1602(part); amd. Sec. 1, Ch. 271, L. 1979; amd. Sec. 31, Ch. 397, L. 1979.

39-31-104. Rules. The board shall adopt, amend, or rescind such rules it considers necessary and administratively feasible to carry out the provisions of this chapter.

History: En. Sec. 13, Ch. 441, L. 1973; R.C.M. 1947, 59-1613(4).

Cross-References

"Board" defined, 39-31-103.

39-31-105. Administrative procedure act applicable. All hearings and appeals shall be in accordance with the appropriate provisions of the Montana Administrative Procedure Act.

History: En. Sec. 17, Ch. 441, L. 1973; R.C.M. 1947, 59-1616.

Cross-References

Montana Administrative Procedure Act, Title , ch. 4.

39-31-106. Board authorized to subpoena witnesses and adminiser oaths. (1) To accomplish the objectives and to carry out the duties precribed by this chapter, the board may subpoena witnesses and may dminister oaths and affirmations.

(2) In cases of neglect or refusal to obey a subpoena issued to any person, he district court of the county in which the investigations or the public hearngs are taking place or the district court of the first judicial district of this tate, upon application by the board, may issue an order requiring such erson to appear before the board or agent to produce evidence or give testiony about the matter under investigation. Failure to obey such order may e punished by the court as contempt.

History: **En. Sec. 13, Ch. 441, L. 1973; R.C.M. 1947, 59-1613(1), (2).**

Cross-References

Contempts, Title 3, ch. 1, part 5.

Subpoena, Rule 45, M.R.Civ.P. (see Title 25, h. 20).

"Board" defined, 39-31-103.

"Person" defined, 39-31-103.

39-31-107. Service of subpoenas, notices of hearing, and other rocess. Any subpoena, notice of hearing, or other process or notice of the oard issued under the provisions of this chapter shall be served as provided y the rules of civil procedure.

History: **En. Sec. 13, Ch. 441, L. 1973; R.C.M. 1947, 59-1613(3).**

Cross-References

Montana Rules of Civil Procedure, Title 25, h. 20.

"Board" defined, 39-31-103.

39-31-108. Counsel for public parties to litigation. In any action rought under the provisions of this chapter in the courts of this state, the ublic employer shall be represented by the attorney general or attorney of ubdivision and the board shall be represented by counsel hired to represent he board for purposes of that proceeding.

History: **En. Sec. 11, Ch. 441, L. 1973; R.C.M. 1947, 59-1611.**

Cross-References

"Public employer" defined, 39-31-103.

39-31-109. Existing collective bargaining agreements not ffected. Nothing in this chapter shall be construed to remove recognition f established collective bargaining agreements already recognized or in existnce prior to July 1, 1973.

History: **En. Sec. 16, Ch. 441, L. 1973; R.C.M. 1947, 59-1615.**

Part 2

Public Employee Self-Organization and Certification of Bargaining Representative

39-31-201. Public employees protected in right of self-organizaion. Public employees shall have and shall be protected in the exercise of the right of self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing on questions of wages, hours, fringe benefits, and other conditions of employment and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection free from interference, restraint, or coercion.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(1).

Cross-References
"Labor organization" defined, 39-31-103.

39-31-202. Board to determine appropriate bargaining unit — factors to be considered. In order to assure employees the fullest freedom in exercising the rights guaranteed by this chapter, the board or an agent of the board shall decide the unit appropriate for the purpose of collective bargaining and shall consider such factors as community of interest, wages, hours, fringe benefits, and other working conditions of the employees involved, the history of collective bargaining, common supervision, common personnel policies, extent of integration of work functions and interchange among employees affected, and the desires of the employees.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(2).

Cross-References
"Board" defined, 39-31-103.

39-31-203. Deduction of dues from employee's pay. Upon written authorization of any public employee within a bargaining unit, the public employer shall deduct from the pay of the public employee the monthly amount of dues as certified by the secretary of the exclusive representative and shall deliver the dues to the treasurer of the exclusive representative.

History: En. Sec. 12, Ch. 441, L. 1973; R.C.M. 1947, 59-1612.

Cross-References
"Public employee" defined, 39-31-103.
"Public employer" defined, 39-31-103.

39-31-204. Right of nonassociation with labor organization on religious grounds — requirements and procedure for assertion of right. (1) No public employee who is a member of a bona fide religious sect or division thereof, the established and traditional tenets or teachings of which oppose a requirement that a member of such sect or division join or financially support a particular or any labor organization, may be required to join or financially support that particular labor organization or any labor organization if the tenets or teachings oppose a requirement that any labor organization be joined or supported as a condition of employment if such public employee pays in lieu of periodic union dues, initiation fees, and assessments, at the same time or times such periodic union dues, initiation fees, and assessments would otherwise be payable, a sum of money equivalent to such periodic union dues, initiation fees, and assessments to a nonreligious, nonunion charity designated by the labor organization. Such public employee shall furnish to such labor organization written receipts evidencing such payments, and failure to make such payments or furnish such receipts shall subject the employee to the same sanctions as would nonpayment of dues, nitiation fees, or assessments under the applicable collective bargaining agreement.

(2) A public employee desiring to avail himself or herself to the right of nonassociation with a labor organization as provided in this section shall make written application to the chairman of the board of personnel appeals. Within 10 days of the date of receipt of such application, the chairman shall appoint a committee of three, consisting of a clergyman not connected with the sect in question, a labor union official not directly connected with the labor organization in question, and a member of the public at large who shall be the chairman. The committee shall within 10 days of the date of its appointment meet at the locale of either the employee's residence or place of employment and, after receiving written or oral presentations from all interested parties, determine by a majority vote whether or not such public employee qualifies for the right of nonassociation with such labor organization. The committee's decision shall be made in writing within 3 days of the meeting date, and a copy thereof shall be forthwith mailed to such public employee, labor organization, and the chairman of the board of personnel appeals.

History: **En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 9-1603(5); amd. Sec. 1, Ch. 237, L. 1985.**

Compiler's Comments

1985 Amendment: Near middle of first sentence of (1), in two places after "support", inserted references to a particular labor organization and before "as a condition of employment", inserted "or any labor organization if the tenets or teachings oppose a requirement that any labor organization be joined or supported"; and made minor changes in phraseology.

Cross-References

Freedom of religion, Art. II, sec. 5, Mont. Const.

"Board" defined, 39-31-103.

"Labor organization" defined, 39-31-103.

"Public employee" defined, 39-31-103.

39-31-205. Designated labor organizations to represent employees without discrimination. Labor organizations designated in accordance with the provisions of this chapter are responsible for representing the interest of all employees in the exclusive bargaining unit without discrimination for the purposes of collective bargaining with respect to rates of pay, hours, fringe benefits, and other conditions of employment.

History: **En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 9-1603(3).**

39-31-206. Labor organization to guarantee certain rights and safeguards prior to certification or recognition. (1) Certification or recognition as an exclusive representative shall be extended or continued, as the case may be, only to a labor or employee organization the written bylaws of which provide for and guarantee the following rights and safeguards and hose practices conform to such rights and safeguards as:

(a) provisions are made for democratic organization and procedures;

(b) elections are conducted pursuant to adequate standards and safeguards;

(c) controls are provided for the regulation of officers and agents having fiduciary responsibility to the organization; and

(d) requirements exist for maintenance of sound accounting and fiscal controls, including annual audits.

(2) The board shall hear and decide all disputes arising under subsection (1).

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(4); amd. Sec. 1, Ch. 18, L. 1985.

Compiler's Comments

1985 Amendment: In (1) inserted "or recognition" after "Certification"; and inserted (2).

39-31-207. Petition on representation question — investigation by board — hearing. (1) The board or an agent of the board shall investigate the petition and, if it has reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing upon due notice whenever, in accordance with such rules as may be prescribed by the board, a petition has been filed:

(a) by an employee or group of employees or any labor organization acting in their behalf alleging that 30% of the employees:

(i) wish to be represented for collective bargaining by a labor organization as exclusive representative; or

(ii) assert that the labor organization which has been certified or is currently being recognized by the public employer as bargaining representative is no longer the representative of the majority of employees in the unit; or

(b) by the public employer alleging that one or more labor organizations have presented to it a claim to be recognized as the exclusive representative in an appropriate unit.

(2) In this hearing, the board is not bound by common law and statutory rules of evidence.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part).

Cross-References

"Appropriate unit" defined, 39-31-103.
"Board" defined, 39-31-103.
"Labor organization" defined, 39-31-103.
"Public employer" defined, 39-31-103.

39-31-208. Representation election at direction of board. (1) If the board or an agent of the board, in the hearing provided for in 39-31-207, finds that there is a question of representation, it shall direct an election by secret ballot to determine whether and by which labor organization the employees desire to be represented or whether they desire to have no labor organization represent them and shall certify the results thereof.

(2) Only those labor organizations which have been designated by more than 10% of the employees in the unit found to be appropriate shall be placed on the ballot.

(3) The board or an agent of the board shall determine who is eligible to vote in the election and shall establish rules governing the election.

(4) Unless the majority vote is for no representation by a labor organization and in any election where none of the choices for a representative on the ballot receives a majority, a runoff election shall be conducted, the ballot providing for selection between the two choices receiving the largest and the second largest number of valid votes cast in the election.

(5) A labor organization which receives the majority of the votes cast in an election shall be certified by the board as the exclusive representative.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part); amd. Sec. 32, Ch. 397, L. 1979.

Cross-References
"Board" defined, 39-31-103.
"Labor organization" defined, 39-31-103.

39-31-209. Consent election. Nothing in 39-31-207 or 39-31-208 prohibits the waiving of hearings by stipulation for the purpose of a consent election in conformity with the rules of the board.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part).

Cross-References
"Board" defined, 39-31-103.

39-31-210. Election in twelve-month period following valid election prohibited. An election shall not be directed in any bargaining unit or in any subdivision thereof within which in the preceding 12-month period a valid election has been held.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part).

39-31-211. Labor organizations representing employees of the board to be unaffiliated. A labor organization representing employees of the board may not affiliate or associate itself with a labor organization that represents any employees other than employees of the board. The board may not certify a labor organization as the exclusive representative of the employees of the board if, at the time of certification or thereafter, the labor organization is associated or affiliated with a labor organization that represents employees other than employees of the board.

History: En Sec. 2, Ch. 271, L. 1979.

Cross-References
"Board" defined, 39-31-103.
"Labor organization" defined, 39-31-103.

Part 3

Bargaining

39-31-301. Representative of public employer. The chief executive officer of the state, the governing body of a political subdivision, the commissioner of higher education, whether elected or appointed, or the designated authorized representative shall represent the public employer in collective bargaining with an exclusive representative.

History: En. Sec. 9, Ch. 441, L. 1973; amd. Sec. 3, Ch. 313, L. 1974; amd. Sec. 1, Ch. 35, L. 1975; R.C.M. 1947, 59-1609.

Cross-References
"Public employer" defined, 39-31-103.

39-31-302. Participation by student representative when public employer is board of regents. When the board of regents is the public employer defined in 39-31-103, the student government at an institution of higher education may designate an agent or representative to meet and confer with the board of regents and the faculty bargaining agent prior to negotiations with the professional educational employees, to observe those negotiations and participate in caucuses as part of the public employer's bargaining team, and to meet and confer with the board of regents regarding the terms of agreement prior to the execution of a written contract between the regents and the professional educational employees. The student observer is obliged to maintain the confidentiality of these negotiations.

History: En. Sec. 2, Ch. 441, L. 1973; amd. Sec. 1, Ch. 117, L. 1975; amd. Sec. 1, Ch. 384, L. 1975; R.C.M. 1947, 59-1602(part).

Cross-References

"Board" defined, 39-31-103.

"Public employer" defined, 39-31-103.

39-31-303. Management rights of public employers. Public employees and their representatives shall recognize the prerogatives of public employers to operate and manage their affairs in such areas as, but not limited to:

(1) direct employees;

(2) hire, promote, transfer, assign, and retain employees;

(3) relieve employees from duties because of lack of work or funds or under conditions where continuation of such work be inefficient and nonproductive;

(4) maintain the efficiency of government operations;

(5) determine the methods, means, job classifications, and personnel by which government operations are to be conducted;

(6) take whatever actions may be necessary to carry out the missions of the agency in situations of emergency;

(7) establish the methods and processes by which work is performed.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(2).

Cross-References

Veterans' and handicapped persons' public employment preference, Title 39, ch. 30.

39-31-304. Negotiable items for school districts. Nothing in this chapter shall require or allow boards of trustees of school districts to bargain collectively upon any matter other than matters specified in 39-31-305(2).

History: En. Sec. 2, Ch. 117, L. 1975; R.C.M. 1947, 59-1617.

39-31-305. Duty to bargain collectively — good faith. (1) The public employer and the exclusive representative, through appropriate officials or their representatives, shall have the authority and the duty to bargain collectively. This duty extends to the obligation to bargain collectively in good faith as set forth in subsection (2) of this section.

(2) For the purpose of this chapter, to bargain collectively is the performance of the mutual obligation of the public employer or his designated representatives and the representatives of the exclusive representative to meet at reasonable times and negotiate in good faith with respect to wages, hours, fringe benefits, and other conditions of employment or the negotiation of an agreement or any question arising thereunder and the execution of a written contract incorporating any agreement reached. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

(3) For purposes of state government only, the requirement of negotiating in good faith may be met by the submission of a negotiated settlement to the legislature in the executive budget or by bill or joint resolution. The failure

to reach a negotiated settlement for submission is not, by itself, prima facie evidence of a failure to negotiate in good faith.

History: (1)En. Sec. 4, Ch. 441, L. 1973; Sec. 59-1604, R.C.M. 1947; (2), (3)En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; Sec. 59-1605, R.C.M. 1947; R.C.M. 1947, 59-1604, 59-1605(3), (4).

Cross-References

"Public employer" defined, 39-31-103.

39-31-306. Collective bargaining agreements. (1) Any agreement reached by the public employer and the exclusive representative shall be reduced to writing and shall be executed by both parties.

(2) An agreement may contain a grievance procedure culminating in final and binding arbitration of unresolved grievances and disputed interpretations of agreements.

(3) An agreement between the public employer and a labor organization shall be valid and enforced under its terms when entered into in accordance with the provisions of this chapter and signed by the chief executive officer of the state or political subdivision or commissioner of higher education or his representative. A publication of the agreement is not required to make it effective.

(4) The procedure for the making of an agreement between the state or political subdivision and a labor organization provided by this chapter is the exclusive method of making a valid agreement for public employees represented by a labor organization.

History: En. Sec. 10, Ch. 441, L. 1973; amd. Sec. 4, Ch. 313, L. 1974; R.C.M. 1947, 59-1610.

Cross-References

"Labor organization" defined, 39-31-103.

"Public employer" defined, 39-31-103.

39-31-307. Mediation of disputes. If, after a reasonable period of negotiation over the terms of an agreement or upon expiration of an existing collective bargaining agreement, a dispute concerning the collective bargaining agreement exists between the public employer and a labor organization, the parties shall request mediation.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(1).

Cross-References

"Labor organization" defined, 39-31-103.

"Public employer" defined, 39-31-103.

39-31-308. Initiation of factfinding — designation of fact finder. (1) If, upon expiration of an existing collective bargaining agreement or 30 days following certification or recognition of an exclusive representative, a dispute concerning the collective bargaining agreement exists between the employer and the exclusive representative, either party may petition the board to initiate factfinding.

(2) Within 3 days of receipt of such petition, the board shall submit to the parties a list of five qualified, disinterested persons from which the parties shall alternate in striking two names. The remaining person shall be designated fact finder. This process shall be completed within 5 days of receipt of the list. The parties shall notify the board of the designated fact finder.

(3) If no request for factfinding is made by either party before the expiration of the agreement or 30 days following certification or recognition of an exclusive representative, the board may initiate factfinding as provided for in subsection (2) above.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(2) thru (4).

Cross-References
"Board" defined, 39-31-103.
"Person" defined, 39-31-103.

39-31-309. Factfinding proceedings. (1) The fact finder shall immediately establish dates and place of hearings.

(2) The public employer and the exclusive representative are the only proper parties to factfinding proceedings.

(3) Upon request of either party or the fact finder, the board shall issue subpoenas for hearings conducted by the fact finder. The fact finder may administer oaths.

(4) Upon completion of the hearings, but no later than 20 days from the date of appointment, the fact finder shall make written findings of facts and recommendations for resolution of the dispute and shall serve such findings on the public employer and the exclusive representative. The fact finder may make this report public 5 days after it is submitted to the parties. If the dispute is not resolved 15 days after the report is submitted to the parties, the report must be made public.

(5) The cost of factfinding proceedings must be equally borne by the board and the parties concerned.

(6) Nothing in 39-31-307 through 39-31-310 prohibits the fact finder from endeavoring to mediate the dispute in which he has been selected or appointed as fact finder.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(5) thru (8); amd. Sec. 33, Ch. 397, L. 1979.

Cross-References
"Board" defined, 39-31-103.
"Public employer" defined, 39-31-103.

39-31-310. Submission of issues to arbitration. Nothing in 39-31-307 through 39-31-310 prohibits the parties from voluntarily agreeing to submit any or all of the issues to final and binding arbitration, and if such agreement is reached, the arbitration shall supersede the factfinding procedures set forth in those sections. An agreement to arbitrate and the award issued in accordance with such agreement shall be enforceable in the same manner as is provided in this chapter for enforcement of collective bargaining agreements.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(9).

39-31-311. Training of fact finders and arbitrators. The board of personnel appeals shall establish a course of education for the training of fact finders and arbitrators. No person may serve as a fact finder or as an arbitrator under this chapter until he has successfully completed the course or equivalent education.

History: En. 59-1614.1 by Sec. 1, Ch. 57, L. 1977; R.C.M. 1947, 59-1614.1.

Cross-References
"Board" defined, 39-31-103.
"Person" defined, 39-31-103.

39-31-312. Nonnegotiable items for state prison. Collective bargaining agreements entered after July 14, 1982, may not contain provisions prohibiting or restricting the use of inmate labor as provided for in 53-30-151.

History: En. Sec. 3, Ch. 7, Sp. L. 1982.

Part 4

Unfair Labor Practices

39-31-401. Unfair labor practices of public employer. It is an unfair labor practice for a public employer to:

(1) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in 39-31-201;

(2) dominate, interfere, or assist in the formation or administration of any labor organization; however, subject to rules adopted by the board under 39-31-104, an employer is not prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) discriminate in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in any labor organization; however, nothing in this chapter or in any other statute of this state precludes a public employer from making an agreement with an exclusive representative to require, as a condition of employment, that an employee who is not or does not become a union member, must have an amount equal to the union initiation fee and monthly dues deducted from his wages in the same manner as checkoff of union dues;

(4) discharge or otherwise discriminate against an employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter; or

(5) refuse to bargain collectively in good faith with an exclusive representative.

History: En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(1); amd. Sec. 34, Ch. 397, L. 1979.

Cross-References
"Board" defined, 39-31-103.
"Labor organization" defined, 39-31-103.
"Public employer" defined, 39-31-103.
"Unfair labor practice" defined, 39-31-103.

39-31-402. Unfair labor practices of labor organization. It is an unfair labor practice for a labor organization or its agents to:

(1) restrain or coerce employees in the exercise of the right guaranteed in 39-31-201 or a public employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances;

(2) refuse to bargain collectively in good faith with a public employer if it has been designated as the exclusive representative of employees;

(3) use agency shop fees for contributions to political candidates or parties at state or local levels.

History: En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(2).

Cross-References

"Public employer" defined, 39-31-103.

"Labor organization" defined, 39-31-103.

"Unfair labor practice" defined, 39-31-103.

39-31-403. Remedies for unfair labor practices. Violations of the provisions of 39-31-401 or 39-31-402 are unfair labor practices remediable by the board pursuant to this part.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part); amd. Sec. 35, Ch. 397, L. 1979.

Cross-References

"Board" defined, 39-31-103.

39-31-404. Six-month limitation on unfair labor practice complaint — exception. No notice of hearing shall be issued based upon any unfair labor practice more than 6 months before the filing of the charge with the board unless the person aggrieved thereby was prevented from filing the charge by reason of service in the armed forces, in which event the 6-month period shall be computed from the day of his discharge.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part).

Cross-References

"Unfair labor practice" defined, 39-31-103.

39-31-405. Unfair labor practice complaint — investigation — notice of hearing — service — answer. (1) Whenever a complaint is filed alleging that any person has engaged in or is engaging in any such unfair labor practice, the board shall issue and cause to be served upon the person a copy of the complaint and provide the person with an opportunity to respond to all charges. After receipt of responses from the charged party, an agent designated by the board for such purposes shall investigate the alleged unfair labor practice.

(2) If, after the investigation, the agent designated by the board determines that the charge is without probable merit, the board shall issue and cause to be served upon the complaining party and the person being charged notice of its intention to dismiss the complaint. The dismissal becomes a final order of the board unless either party requests a review of the decision to dismiss the complaint. The request for a review must be made in writing within 10 days of receipt of the notice of intention to dismiss. If a review is requested, the board may uphold its decision to dismiss the complaint or, pursuant to subsection (3), schedule a hearing on the merits. If the board upholds its decision to dismiss the complaint, the dismissal becomes a final order of the board.

(3) If after the investigation or after the review provided for in subsection (2), the board determines that there is probable merit for the charge, the board shall issue and cause to be served upon the complaining party and the party charged a notice of hearing before the board, a member thereof, or before a designated agent at a time and place therein fixed, not less than 5 working days after the date of service.

(4) If a hearing is to be held, the person against whom the charge is filed shall file an answer to the complaint.

(5) Each party to an unfair labor practice proceeding has the right to disqualify, without cause, the hearing examiner designated by the board to hear the complaint. The right may be exercised only once by each party and must

be exercised within 5 days from the time a party is notified by the board of the hearing examiner designated to hear the matter. The exercise of this right is in addition to any rights a party has to disqualify a hearing examiner under 2-4-611.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part); amd. Sec. 1, Ch. 95, L. 1983; (5)En. Sec. 1, Ch. 211, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 95 made the following changes: in (1), after "the board" deleted "or any agent designated by the board for such purposes" and inserted everything after "cause to be served upon the person a copy of the complaint and"; inserted (2); in (3), inserted everything before "a notice of hearing before the board"; and at the beginning of (4), inserted "If a hearing is to be held" and substituted "against" for "upon" and "filed" for "served".

Chapter 211 enacted (5).

Cross-References

"Board" defined, 39-31-103.

"Person" defined, 39-31-103.

"Unfair labor practice" defined, 39-31-103.

39-31-406. Hearing on complaint — findings — order. (1) The complainant and the person charged shall be parties and shall appear in person or otherwise give testimony at the place and time fixed in the notice of hearing. In the discretion of the board or its agent conducting the hearing, any other person may be allowed to intervene in the proceeding and present testimony.

(2) In any hearing the board is not bound by the rules of evidence prevailing in the courts.

(3) The testimony taken by the board or its agent shall be reduced to writing and filed with the board. Thereafter, in its discretion the board upon notice may take further testimony or hear argument.

(4) If, upon the preponderance of the testimony taken, the board is of the opinion that any person named in the complaint has engaged in or is engaging in an unfair labor practice, it shall state its findings of fact and shall issue and cause to be served on the person an order requiring him to cease and desist from the unfair labor practice and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this chapter. The order may further require the person to make reports from time to time showing the extent to which he has complied with the order. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged or the payment to him of any back pay if it is found that the individual was suspended or discharged for cause.

(5) If, upon the preponderance of the testimony taken, the board is not of the opinion that the person named in the complaint has engaged in or is engaging in the unfair labor practice, then the board shall state its findings of fact and shall issue an order dismissing the complaint.

(6) If the evidence is presented before a member of the board or before an examiner, the member or the examiner, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed decision, together with a recommended order, which shall be filed with the board, and if no exceptions are filed within 20 days after service thereof upon the parties or within such further period as the board may authorize, the recommended order shall become the order of the board. The board shall issue a final order within 5 months after final briefs are submitted to the hearing officer. If

briefs are to be submitted, but either or both of the parties fail to submit their brief on the date set by the hearing examiner at the close of the hearing on the matter, then the board shall issue a final order within 5 months after the date the last brief was ordered to be submitted. If no briefs are to be submitted, the board shall issue a final order within 5 months after the hearing.

History: **En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part); amd. Sec. 1, Ch. 369, L. 1979; amd. Sec. 1, Ch. 213, L. 1983.**

Compiler's Comments

1983 Amendment: Substituted the last two sentences of (6) for "The board shall issue a final order within 5 months after a complaint is submitted to the hearing officer."

Cross-References

"Board" defined, 39-31-103.

"Person" defined, 39-31-103.

"Unfair labor practice" defined, 39-31-103.

39-31-407. Amendment of complaint. Any complaint may be amended by the complainant at any time prior to the issuance of an order based thereon, provided that the charged party is not unfairly prejudiced thereby.

History: **En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part).**

39-31-408. Modification by board of findings and order. Until the record in a proceeding has been filed in district court, the board at any time, upon reasonable notice and in such manner as it considers proper, may modify or set aside, in whole or in part, any finding or order made or issued by it.

History: **En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(3).**

Cross-References

"Board" defined, 39-31-103.

39-31-409. Court enforcement and review of board order. (1) The board or the complaining party may petition for the enforcement of the order of the board and for appropriate temporary relief or a restraining order and shall file in the district court at its own expense the record in the proceedings.

(2) Upon the filing of the petition, the district court shall have jurisdiction of the proceeding. Thereafter, the district court shall set the matter for hearing and shall order the party charged to be served with notice of hearing at least 20 days before the date set for hearing.

(3) No objection that has not been raised before the board shall be considered by the court unless the failure or neglect to raise the objection is excused because of extraordinary circumstances.

(4) The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

(5) If either party applies to the court for leave to present additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to present it in the hearing before the board, the court may order the additional evidence to be taken before the board and to be made part of the record. The board may modify its findings as to the facts or make new findings by reason of additional evidence so taken and filed, and it shall file the modifying or new findings with the district court.

(6) After the hearing, the district court shall issue its order granting such temporary or permanent relief or restraining order as it considers just and

proper, enforcing as so modified or setting aside, in whole or in part, the order of the board. Any order of the district court shall be subject to review by the supreme court in accordance with rules of civil procedure.

(7) The commencement of proceedings under subsections (1) through (6) of this section shall not, unless specifically ordered by the court, operate as a stay of the board's order.

History: **En. Sec. 8, Ch. 441, L. 1973; R.C.M. 1947, 59-1608.**

Cross-References

"Board" defined, 39-31-103.

CHAPTER 32

COLLECTIVE BARGAINING FOR NURSES

Part 1 — General Provisions

Section

39-32-101. Purpose of chapter.
39-32-102. Definitions.
39-32-103. Rules.
39-32-104. Hearings for determination of appropriate unit.
39-32-105. General classifications for health care facilities and appropriate units — petition for removal from general classification.
39-32-106. Determination of appropriate bargaining unit.
39-32-107. Repealed.
39-32-108. Repealed.
39-32-109. Unfair labor practices.
39-32-110. Unlawful strikes.
39-32-111. Repealed.
39-32-112. Adjudication of unfair labor practices complaints by board.
39-32-113. Representation questions decided by board.
39-32-114. Subpoena power of board.

Part 1

General Provisions

39-32-101. Purpose of chapter. The purpose of this chapter is to encourage effective measures to assure uninterrupted continuation of sufficient competent nursing care of the ill and infirm in the state and further to encourage the practice of mutually and peacefully agreeing upon the establishment and maintenance of desirable employment practices between nurse employees, professional and practical, and their health care facility employers, either public or private.

History: **En. Sec. 1, Ch. 320, L. 1969; R.C.M. 1947, 41-2201.**

39-32-102. Definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Appropriate unit" means a homogenous group of employees (as herein defined) of a health care facility having similar duties and qualifications determined pursuant to 39-32-106.

(2) "Board" means the board of personnel appeals provided for in 2-15-1705.

(3) "Employee" means a registered professional or licensed practical nurse performing services for compensation for a health care facility but does not include a member of a religious order assigned to a health care facility by the order as a part of her obligation to the order.

(4) "Health care facility" means a hospital or nursing home or other agency or establishment employing employees as defined in this chapter whether operated publicly or privately, having as one of its principal purposes the preservation of health or the care of sick or infirm individuals, or both.

(5) "Strike" shall mean any work stoppage caused by the employees of a health care facility, as defined in subsection (4) of this section, that interferes with the operation of the health care facility or affects the care of patients in the health care facility.

History: **En. Sec. 2, Ch. 320, L. 1969; R.C.M. 1947, 41-2202(1) thru (3), (5); amd. Sec. 1, Ch. 485, L. 1983.**

Compiler's Comments
1983 Amendment: Inserted (2).

39-32-103. Rules. The board shall adopt and promulgate rules to carry into effect the provisions of this chapter.

History: **En. Sec. 7, Ch. 320, L. 1969; R.C.M. 1947, 41-2207(3); amd. Sec. 2, Ch. 485, L. 1983.**

Compiler's Comments
1983 Amendment: Substituted "board shall" for "department of labor and industry may" and deleted provision for rules "as to times and places for hearing and notice thereof so as to provide adequate notice and opportunity to be heard to all interested parties" and "as to elections".

Cross-References
Adoption and publication of rules, Title 2, ch. 4, part 3.

39-32-104. Hearings for determination of appropriate unit. The board may set the time and place for hearings for determination of the composition of appropriate units when requested to make such determination under 39-32-106(2).

History: **En. Sec. 7, Ch. 320, L. 1969; R.C.M. 1947, 41-2207(1); amd. Sec. 3, Ch. 485, L. 1983.**

Compiler's Comments
1983 Amendment: Substituted "board" for "department of labor and industry", and deleted "or 39-32-108(1)" at end.

Cross-References
"Appropriate unit" defined, 39-32-102.

39-32-105. General classifications for health care facilities and appropriate units — petition for removal from general classification. (1) The board may determine, on its own motion by holding hearings or conducting such investigations as it thinks necessary, general classifications for health care facilities and appropriate units.

(2) When such determination has been made hereunder and when an application has been made by a health care facility or an employee organization for a specific determination as to it, the board may make such determination on the basis of such general classification.

(3) The health care facility or employee organization may, within 30 days after notice to it of such determination, file a request for a hearing upon written petition which shall set forth the facts which it believes remove it from such general classification, and hearing shall be held on such petition.

History: En. Sec. 7, Ch. 320, L. 1969; R.C.M. 1947, 41-2207(2); amd. Sec. 4, Ch. 485, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted "board" for "department of labor and industry" in two places.

Cross-References

"Employee" defined, 39-32-102.

"Health care facility" defined, 39-32-102.

39-32-106. Determination of appropriate bargaining unit. (1) The composition of an appropriate unit in a health care facility, for purposes of this law, may be determined by mutual consent between such facility and the employees thereof.

(2) In the event no such mutual consent is available, then either the facility or representatives of employees may apply to the board and said board, through a duly designated agent, shall make a determination of the composition of such an appropriate unit.

(3) In determining such appropriate unit, professional employees may not be included in the same unit with nonprofessional employees unless a majority of professional employees in a proposed unit desire such inclusion. Weight shall be accorded similarity of duties, licensure, and conditions of employment, among other relevant factors, in determining an appropriate unit.

History: En. Sec. 4, Ch. 320, L. 1969; R.C.M. 1947, 41-2204; amd. Sec. 5, Ch. 485, L. 1983.

Compiler's Comments

1983 Amendment: In (2), substituted "board" for "department of labor and industry" in two places.

Cross-References

"Appropriate unit" defined, 39-32-102.

"Health care facility" defined, 39-32-102.

39-32-107. Repealed. Sec. 12, Ch. 485, L. 1983.

History: En. Sec. 5, Ch. 320, L. 1969; R.C.M. 1947, 41-2205.

39-32-108. Repealed. Sec. 12, Ch. 485, L. 1983.

History: En. Sec. 6, Ch. 320, L. 1969; R.C.M. 1947, 41-2206.

39-32-109. Unfair labor practices. (1) It is an unfair labor practice for a health care facility to do one or more of the following:

(a) interfere with or restrain or coerce employees in any manner in the exercise of their right of self-organization;

(b) initiate, create, dominate, contribute to, or interfere with the formation or administration of any employee organization that has collective bargaining as one of its principal functions;

(c) discriminate in regard to hire terms or conditions of employment when a purpose of such is to discourage membership in an employee organization that has collective bargaining as one of its principal functions;

(d) refuse to meet and bargain in good faith with the duly designated representatives of an appropriate bargaining unit of its employees. For the purpose of this subsection, it is a requirement of bargaining in good faith that the parties be willing to reduce in writing and have their representative sign any agreement arrived at through negotiations and discussion.

(e) unilaterally exclude from work or prevent from working or discharge any one or more employees when the purpose of such action is in whole or in part to interfere with or coerce or intimidate an employee in the exercise of rights assured in this law.

(2) It is an unfair labor practice for a labor organization or its agents to:

(a) restrain or coerce employees in the exercise of the right to:

(i) form, join, or assist any labor organization;

(ii) bargain collectively through representatives of their own choosing; or

(iii) engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection;

(b) restrain or coerce an employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances;

(c) refuse to bargain collectively in good faith with an employer if it has been designated as the exclusive representative of employees;

(d) use agency shop fees for contributions to political candidates or parties.

History: En. Sec. 3, Ch. 320, L. 1969; R.C.M. 1947, 41-2203; amd. Sec. 6, Ch. 485, L. 1983; (2)En. Sec. 7, Ch. 485, L. 1983.

Compiler's Comments

1983 Amendment: In introductory clause, substituted "unfair labor practice" for "improper employment practice".

Cross-References

"Employee" defined, 39-32-102.

"Health care facility" defined, 39-32-102.

39-32-110. Unlawful strikes. It shall be unlawful for any employee of a health care facility, as defined in 39-32-102, to participate in a strike if there is another strike in effect at another health care facility within a radius of 150 miles. Employees of a health care facility, as defined in 39-32-102, or their duly elected representative must give the health care facility 30 days' written notice of any strike by them and must specify in the notice the day the strike is to begin.

History: En. Sec. 9, Ch. 320, L. 1969; R.C.M. 1947, 41-2209.

Cross-References

"Employee" defined, 39-32-102.

"Health care facility" defined, 39-32-102.

"Strike" defined, 39-32-102.

39-32-111. Repealed. Sec. 12, Ch. 485, L. 1983.

History: En. Sec. 8, Ch. 320, L. 1969; R.C.M. 1947, 41-2208.

39-32-112. Adjudication of unfair labor practices complaints by board. Violations of 39-32-109 are remediable by the board, and board orders are enforceable and reviewable by the court in the same manner as provided for in Title 39, chapter 31, part 4.

History: En. Sec. 8, Ch. 485, L. 1983.

39-32-113. Representation questions decided by board. Representation questions shall be decided by the board in the same manner as provided for in 39-31-207 through 39-31-210.

History: En. Sec. 9, Ch. 485, L. 1983.

39-32-114. Subpoena power of board. The board has the same power to subpoena witnesses and administer oaths and affirmations under this chapter as it does under Title 39, chapter 31, and the provisions of 39-31-106 and 39-31-107 are incorporated by reference into this chapter.

History: En. Sec. 10, Ch. 485, L. 1983.

CHAPTER 33

GENERAL LIMITATIONS ON COLLECTIVE BARGAINING RIGHTS

Part 1 — Right to Work Without Union Interference in Certain Small Businesses

Section

39-33-101. Intent of part.
39-33-102. Immediate family defined.
39-33-103. Unfair labor practice.
39-33-104. Beer and liquor establishment excepted.
39-33-105. Violation.

Part 2 — Employment of Strikebreakers

39-33-201. Recruitment of strikebreakers by third parties.
39-33-202. Professional strikebreakers prohibited.
39-33-203. Agreements to procure strikebreakers prohibited.
39-33-204. Advertising for strikebreakers restricted.
39-33-205. Penalties.

Chapter Cross-References

Youth Conservation Corps project for job covered by collective bargaining agreement, 76-21-301.

Part 1

Right to Work Without Union Interference in Certain Small Businesses

39-33-101. Intent of part. It is the intent of this part that a sole proprietor or a member of a partnership consisting of not more than two partners who own a retail or amusement establishment and the members of his immediate family shall have the right to do any work in his place of business without interference by any union or any member thereof.

History: **En. Sec. 1, Ch. 160, L. 1959; R.C.M. 1947, 41-1801.**

39-33-102. Immediate family defined. "Immediate family" shall include the owner, his spouse, and any children under the age of 18 years.

History: **En. Sec. 3, Ch. 160, L. 1959; R.C.M. 1947, 41-1803.**

39-33-103. Unfair labor practice. Any union or member thereof who shall infringe or interfere with the right of an owner and the members of his immediate family to do any work in his place of business shall be guilty of an unfair labor practice.

History: **En. Sec. 2, Ch. 160, L. 1959; R.C.M. 1947, 41-1802.**

39-33-104. Beer and liquor establishment excepted. Nothing in this part shall apply to an establishment that sells liquor or beer.

History: **En. Sec. 4, Ch. 160, L. 1959; R.C.M. 1947, 41-1804.**

39-33-105. Violation. Violation of any of the provisions of this par shall be punishable by a fine of $50.

History: **En. Sec. 5, Ch. 160, L. 1959; R.C.M. 1947, 41-1805.**

Part 2

Employment of Strikebreakers

39-33-201. Recruitment of strikebreakers by third parties. No person, partnership, firm, or officer or agent thereof may recruit, procure supply, or refer a professional strikebreaker for employment in place of an employee involved in a labor dispute when such person, partnership, or firm is not a party to the dispute.

History: **En. 41-2501 by Sec. 1, Ch. 40, L. 1975; R.C.M. 1947, 41-2501.**

39-33-202. Professional strikebreakers prohibited. (1) An employer involved in a labor dispute may not employ in the place of an employee involved in such dispute a professional strikebreaker who customarily and repeatedly offers himself for employment in the place of employees involved in labor disputes.

(2) A professional strikebreaker who customarily and repeatedly offers himself for employment in place of employees involved in labor disputes may not take or offer to take the place in employment of an employee involved in a labor dispute within the state.

History: **En. 41-2502 by Sec. 2, Ch. 40, L. 1975; R.C.M. 1947, 41-2502.**

39-33-203. Agreements to procure strikebreakers prohibited. No employer involved in a labor dispute may contract or arrange with any other person, partnership, or firm for the latter to recruit, procure, supply, or refer professional strikebreakers for employment in place of employees involved in the dispute.

History: **En. 41-2503 by Sec. 3, Ch. 40, L. 1975; R.C.M. 1947, 41-2503.**

39-33-204. Advertising for strikebreakers restricted. No person partnership, or firm may recruit, solicit, or advertise for employees or refer persons to employment in place of employees involved in a labor dispute without adequate notice in such advertisement or reference that there is a labor dispute at the place at which employment is offered and that the employment offered is in the place of employees involved in such dispute.

History: **En. 41-2504 by Sec. 4, Ch. 40, L. 1975; R.C.M. 1947, 41-2504.**

39-33-205. Penalties. A person convicted of violating 39-33-201 39-33-202, or 39-33-203 shall be punished by a fine of not less than $1,000 or more than $5,000 or by imprisonment for not less than 1 or more than 2 years. A person convicted of violating 39-33-204 shall be punished by a fine of not less than $100 or more than $500 or imprisonment for not more than 30 days.

History: **En. 41-2505 by Sec. 5, Ch. 40, L. 1975; R.C.M. 1947, 41-2505.**

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

CHAPTER 34

ARBITRATION FOR FIREFIGHTERS

Part 1 — General Provisions

Section
39-34-101. Arbitration between firefighters and public employers.
39-34-102. Designation of arbitrator.
39-34-103. Powers and duties of arbitrator for firefighters and public employers.
39-34-104. Collective bargaining permitted during arbitration.
39-34-105. Strikes limited.
39-34-106. Cost of arbitration.

Part 1

General Provisions

39-34-101. Arbitration between firefighters and public employers. (1) This section applies only to firefighters and their public employers.

(2) If an impasse is reached in the course of collective bargaining between a public employer and a firefighters' organization or its exclusive representative and if the procedures for mediation and factfinding in 39-31-307 through 39-31-310 have been exhausted, either party or both jointly may petition the board of personnel appeals for final and binding arbitration.

History: En. Sec. 1, Ch. 472, L. 1979; amd. Sec. 165, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "of personnel appeals" after "board" in (2).

39-34-102. Designation of arbitrator. Within 3 days of the receipt of a petition for final and binding arbitration, the board of personnel appeals shall submit to the parties a list of five qualified and disinterested arbitrators. From the list submitted by the board, the parties shall alternately strike two names. The remaining person shall be designated as the arbitrator. The parties shall notify the board of the designated arbitrator within 5 days of the receipt of the list.

History: En. Sec. 2, Ch. 472, L. 1979; amd. Sec. 166, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "of personnel appeals" after "board".

39-34-103. Powers and duties of arbitrator for firefighters and public employers. (1) The arbitrator shall establish dates and a place for hearings and may subpoena witnesses and require the submission of evidence necessary to resolve the impasse.

(2) Prior to making a determination on any issue relating to the impasse, the arbitrator may refer the issues back to the parties for further negotiation.

(3) At the conclusion of the hearings, the arbitrator shall require the parties to submit their respective final position on matters in dispute.

(4) The arbitrator shall make a just and reasonable determination of which final position on matters in dispute will be adopted within 30 days of the commencement of the arbitration proceedings. The arbitrator shall notify the board of personnel appeals and the parties, in writing, of his determination.

(5) In arriving at a determination, the arbitrator shall consider any relevant circumstances, including:

(a) comparison of hours, wages, and conditions of employment of the employees involved with employees performing similar services and with other services generally;

(b) the interests and welfare of the public and the financial ability of the public employer to pay;

(c) appropriate cost-of-living indices;

(d) any other factors traditionally considered in the determination of hours, wages, and conditions of employment.

(6) The determination of the arbitrator is final and binding and is not subject to the approval of any governing body.

History: En. Sec. 3, Ch. 472, L. 1979; amd. Sec. 167, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "of personnel appeals" after "board" in (4).

39-34-104. Collective bargaining permitted during arbitration. Nothing prohibits the parties to the impasse from reaching an agreement prior to the rendering of a determination by the arbitrator.

History: En. Sec. 4, Ch. 472, L. 1979.

39-34-105. Strikes limited. Strikes are prohibited during the term of any contract and the negotiations or arbitration of that contract.

History: En. Sec. 5, Ch. 472, L. 1979.

39-34-106. Cost of arbitration. The cost of arbitration shall be shared equally by the public employer and the firefighters' organization or its exclusive representative.

History: En. Sec. 6, Ch. 472, L. 1979.

CHAPTERS 35 THROUGH 50

RESERVED

CHAPTER 51

UNEMPLOYMENT INSURANCE

Part 1 — General Provisions

Section

39-51-101. Short title.
39-51-102. Declaration of state public policy.
39-51-103. Nonliability of state — right to benefits subject to provisions of chapter and extent of available funds.

39-51-104. Chapter to become inoperative if federal act becomes inoperative.
39-51-105. Disbursement of funds if federal act becomes inoperative.
39-51-106. Approval by secretary of labor required for chapter to have effect.

Part 2 — Definitions

39-51-201. General definitions.
39-51-202. Employer defined.
39-51-203. Employment defined.
39-51-204. Exclusions from definition of employment.
39-51-205. Agricultural labor defined.
39-51-206. Agricultural labor — who treated as employer of member of a crew furnished by a crew leader.

Part 3 — General Administrative Provisions

39-51-301. Administration — duties and powers of department.
39-51-302. Administrative rules.
39-51-303. Publication and distribution of materials.
39-51-304. Personnel.
39-51-305. Department to appoint appeals referees.
39-51-306. Repealed.
39-51-307. Department to create employment service.
39-51-308. Acquisition and disposition of property by department.
39-51-309. Representation of department and state in court.
39-51-310. Function of board.

Part 4 — Financial Administration

39-51-401. Unemployment insurance fund — establishment and control.
39-51-402. Unemployment insurance fund — custodian — accounts and deposits.
39-51-403. Money to be requisitioned from unemployment trust fund solely for payment of benefits — exception.
39-51-404. Administrative expenses.
39-51-405. Signatures required on warrants.
39-51-406. Unemployment insurance administration account.
39-51-407. Reimbursement of fund by state.
39-51-408. Advances from federal unemployment trust fund.

Part 5 — Governmental Cooperation

39-51-501. State-federal cooperation.
39-51-502. Cooperation with other agencies.
39-51-503. Agreements with railroad retirement board.
39-51-504. Reciprocal benefit arrangements.

Part 6 — Records and Reports

39-51-601. Department to maintain wage record.
39-51-602. Method to be used by department in keeping wage records.
39-51-603. Employing unit to keep records and make reports.

Parts 7 through 10 reserved

Part 11 — Employer Contributions

39-51-1101. Commencement and termination of coverage under chapter.
39-51-1102. Election by employing units not otherwise subject to chapter.
39-51-1103. Contributions by employers required — payments in lieu thereof authorized for certain employers.
39-51-1104. Duty and liability of contractor and subcontractor respectively in regard to contributions owed by subcontractor.

39-51-1105. Liability of corporate officers for contributions owed by corporation.
39-51-1106. Repealed.
39-51-1107. Repealed.
39-51-1108. Amount of wages per employee subject to contribution.
39-51-1109. Tax appeals.
39-51-1110. Refunds to employers.
39-51-1111 through 39-51-1120 reserved.
39-51-1121. Definitions.
39-51-1122. Treatment of minor irregularities in determination of eligible employer status.
39-51-1123. Rates of contributions.
39-51-1124. Procedure for election to make payments in lieu of contributions.
39-51-1125. Computation of payments in lieu of contributions.
39-51-1126. Termination of election to make payments in lieu of contributions.
39-51-1127 through 39-51-1130 reserved.
39-51-1131. Surtax to pay federal advances.

Part 12 — Employer Classification and Experience Rating

39-51-1201 through 39-51-1205. Repealed.
39-51-1206. Department to provide for notification of employers of their classification and contribution rate.
39-51-1207 through 39-51-1210 reserved.
39-51-1211. Definitions.
39-51-1212. Experience rating for governmental entities.
39-51-1213. Classification of employers for experience rating purposes.
39-51-1214. Benefit payments chargeable to employer experience rating accounts.
39-51-1215. Maintenance of experience rating records.
39-51-1216. Experience rating record voided when account inactive.
39-51-1217. Schedule of rates assigned based on trust fund reserve.
39-51-1218. Rate schedules.
39-51-1219. Procedures for the substitution, merger, or acquisition of an employer account by a successor employing unit.

Part 13 — Unpaid Contributions

39-51-1301. Penalty and interest on past-due contributions.
39-51-1302. Summary or jeopardy assessment of unpaid contributions.
39-51-1303. Collection of unpaid contributions by civil action.
39-51-1304. Lien for payment of unpaid contributions — levy and execution.
39-51-1305. Priority of payment of contributions due under legal dissolutions or distributions.
39-51-1306. Reciprocity with other states for collection of unpaid contributions.

Parts 14 through 20 reserved

Part 21 — Benefit Eligibility

39-51-2101. Total unemployment — when.
39-51-2102. Week of unemployment — when deemed to commence.
39-51-2103. Payment of benefits.
39-51-2104. General benefit eligibility conditions.
39-51-2105. Qualifying wages.
39-51-2106. Certain wages not to be used in determining benefit eligibility or amount.
39-51-2107. Services for remuneration to be performed during benefit year as condition for receiving benefits in second benefit year — amount required.
39-51-2108. Payment of benefits based on service in public, charitable, or educational organizations.
39-51-2109. Payment of benefits to athletes.
39-51-2110. Payment of benefits to aliens.

Part 22 — Amount and Duration of Benefits

39-51-2201. Weekly benefit amount — determination of average weekly wage.

39-51-2202. Partial payment of benefits.
39-51-2203. Reduction of benefits because of amounts received from certain other sources.
39-51-2204. Duration of benefits.
39-51-2205. Continuation of benefits at death of claimant.
39-51-2206. Collection of benefit overpayments.

Part 23 — Benefit Disqualification

39-51-2301. Disqualification not to be confined to a single benefit year.
39-51-2302. Disqualification for leaving work without good cause.
39-51-2303. Disqualification for discharge due to misconduct.
39-51-2304. Disqualification for failure to apply for or to accept suitable work.
39-51-2305. Disqualification when unemployment due to strike.
39-51-2306. Disqualification because of receipt of certain other wages, compensation, or benefits.
39-51-2307. Disqualification because of student status.
39-51-2308. Disqualification because principal occupation is self-employment.

Part 24 — Claims for Benefits

39-51-2401. Claims to be made in accordance with regulations — employers to post and make available copies of such regulations.
39-51-2402. Initial determination — redetermination.
39-51-2403. Decision of appeals referee.
39-51-2404. Appeal to board.
39-51-2405. Prompt payment of claims.
39-51-2406. Continuing jurisdiction of department over claims.
39-51-2407. Procedure for disputed claims to be prescribed by regulation.
39-51-2408. Disputed claim — records of all proceedings to be kept.
39-51-2409. Witness fees.
39-51-2410. Finality of board's decision — judicial review.

Part 25 — Extended Benefits

39-51-2501. Definitions.
39-51-2502. Repealed.
39-51-2503. Repealed.
39-51-2504. State "on" indicator — when.
39-51-2505. State "off" indicator — when.
39-51-2506. Beginning and termination of extended benefit period — announcement of.
39-51-2507. Effect of state law provisions relating to regular benefits on claims for and the payment of extended benefits.
39-51-2508. Eligibility requirements for extended benefits — disqualifications — acceptance of suitable work.
39-51-2509. Weekly extended benefit amount.
39-51-2510. Total extended benefit amount.
39-51-2511. Extended benefits filed interstate.

Part 26 — Trade Readjustment

39-51-2601. Limitations on weeks of combined extended benefits and trade readjustment allowances.
39-51-2602. Approved trade readjustment training.

Parts 27 through 30 reserved

Part 31 — Protections and Limitations on Rights and Benefits

39-51-3101. Protection against self-incrimination.
39-51-3102. Certain agreements in violation of chapter void.
39-51-3103. Employer prohibited from making, requiring, or accepting deduction from wages or requiring or accepting waiver of rights under chapter — penalty for violation.
39-51-3104. Limitation of fees in claim for benefits — penalty for violation.

39-51-3105. Assignment, pledge, or encumbrance of right to benefits void — benefits exempt from levy, execution, attachment, or other remedy for collection of debt — exception.
39-51-3106. Child support interception of unemployment benefits.

Part 32 — General Penalties

39-51-3201. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits — administrative penalty and remedy.
39-51-3202. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits — criminal penalty.
39-51-3203. Obtaining benefits through deception or other fraudulent means — criminal penalty.
39-51-3204. Employing unit making false statement or representation, failing to disclose material fact, or failing or refusing to make contributions or other payments, furnish reports, or permit inspection or copying of records — criminal penalty.
39-51-3205. Criminal penalty for violations of chapter where no penalty prescribed.
39-51-3206. Liability for wrongful or improper receipt of benefits.

Part 1

General Provisions

39-51-101. Short title. This chapter shall be known and may be cited as the "Unemployment Insurance Law".

History: **En. Sec. 1, Ch. 137, L. 1937; R.C.M. 1947, 87-101; amd. Sec. 1, Ch. 57, L. 1979.**

39-51-102. Declaration of state public policy. As a guide to the interpretation and application of this chapter, the public policy of this state is declared to be as follows:

(1) Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state.

(2) Involuntary unemployment is, therefore, a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance.

(3) The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require the enactment of this measure under the police powers of the state for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

History: **En. Sec. 2, Ch. 137, L. 1937; R.C.M. 1947, 87-102.**

39-51-103. Nonliability of state — right to benefits subject to provisions of chapter and extent of available funds. (1) Benefits shall be deemed to be due and payable under this chapter only to the extent provided in this chapter and to the extent that moneys are available therefor to the credit of the unemployment insurance fund, and neither the state nor the department shall be liable for any amount in excess of such sums.

(2) The legislature reserves the right to amend or repeal all or any part of this chapter at any time and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this chapter at any time.

History: (1)En. Sec. 18, Ch. 137, L. 1937; amd. Sec. 32, Ch. 368, L. 1975; Sec. 87-147, R.C.M. 1947; (2)En. Sec. 20, Ch. 137, L. 1937; Sec. 87-150, R.C.M. 1947; R.C.M. 1947, 87-147, 87-150; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" near the end of (1).

39-51-104. Chapter to become inoperative if federal act becomes inoperative. If Title III or Title IX of the federal Social Security Act is declared unconstitutional or in any way becomes inoperative, then this chapter shall terminate and cease and have no force and effect as of the date when said title or titles of said act are declared unconstitutional or become inoperative.

History: En. Sec. 22, Ch. 137, L. 1937; R.C.M. 1947, 87-151.

39-51-105. Disbursement of funds if federal act becomes inoperative. If Title III or IX of the federal Social Security Act is declared unconstitutional or in any way is inoperative, this chapter automatically becomes inoperative under the provisions of this chapter and the funds which then remain in the unemployment trust fund shall immediately be paid to the state treasurer to be paid into the unemployment insurance fund and funds there held shall be immediately distributed, upon order of the department, to the employers who have contributed thereto on a proportionate basis. If any part thereof remains undistributed for a period of 1 year it shall be paid to the general fund of the state.

History: En. Subd. (d), Sec. 9, Ch. 137, L. 1937; amd. Sec. 8, Ch. 368, L. 1975; R.C.M. 1947, 87-114; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" near the end of the first sentence.

39-51-106. Approval by secretary of labor required for chapter to have effect. If the secretary of labor shall fail to approve this chapter, the same shall immediately terminate and have no force and effect.

History: En. Sec. 23, Ch. 137, L. 1937; amd. Sec. 12, Ch. 156, L. 1961; R.C.M. 1947, 87-152.

Part 2

Definitions

39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 due to a temporary total disability as defined in 39-71-116 or a similar statute of another state or the United States, the base period means the first four quarters of the last five quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment.

(4) "Benefit year", with respect to any individual, means the 52 consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim for benefits, except that the benefit year shall be 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404(4).

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) "Employing unit" means any individual or organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this state, except as provided under subsections (8) and (9) of 39-51-203. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is deemed to be employed by such employing unit for the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(10) "Employment office" means a free public employment office or branch thereof operated by this state or maintained as a part of a state-controlled system of public employment offices or such other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(11) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required and from which all benefits provided under this chapter shall be paid.

(12) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct which demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or his employer.

(13) "Hospital" means an institution which has been licensed, certified, or approved by the state as a hospital.

(14) (a) "Institution of higher education", for the purposes of this part, means an educational institution which:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this part.

(15) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(16) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter shall be paid.

(17) (a) "Wages" means all remuneration payable for personal services, including commissions and bonuses, the cash value of all remuneration payable in any medium other than cash, and backpay received pursuant to a dispute related to employment. The reasonable cash value of remuneration payable in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the department.

(b) The term "wages" does not include:

(i) the amount of any payment made to or on behalf of an employee by an employer on account of:

(A) retirement;

(B) sickness or accident disability;

(C) medical and hospitalization expenses in connection with sickness or accident disability; or

(D) death;

(ii) remuneration paid by any county welfare office from public assistance funds for services performed at the direction and request of such county welfare office.

(18) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(19) An individual's "weekly benefit amount" means the amount of benefits he would be entitled to receive for 1 week of total unemployment.

History: (1), (14), (18) thru (21)En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; Sec. 87-149, R.C.M. 1947; (2), (4) thru (13), (15) thru (17)En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; Sec. 87-148, R.C.M. 1947; (3)En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; Sec. 87-109, R.C.M. 1947; R.C.M. 1947, 87-109(part), 87-148(a) thru (h), (k) thru (p), 87-149(part); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 170, L. 1979; amd. Sec. 36, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 245, L. 1983; amd. Sec. 1, Ch. 23, L. 1985; amd. Sec. 1, Ch. 125, L. 1985; amd. Sec. 1, Ch. 461, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 23 at end of (2) substituted "within 24 months of the date on which the individual's disability was incurred" for "within 18 months of the individual's last employment".

Chapter 125 deleted former (1) that read: "The word "administrator" refers to a person appointed by the commissioner of labor and industry to direct and administer the unemployment insurance laws and federal laws falling within the administrator's jurisdiction"; deleted former (3) that read: ""Annual total payroll" means the total of the four quarters of total payrolls of an employer preceding the computation date as fixed herein"; and in (17)(a) at end of first sentence, inserted clause relating to backpay.

Chapter 461 in (7) at end, inserted "but does not include assessments under 39-51-404(4)".

1983 Amendment: In (4) (now (2)), inserted last sentence.

1981 Amendment: Substituted the definition of "department of labor and industry" for "employment security division" in (10) (now (8)); substituted "department" for "division" in (12) (now (10)) and (19)(a) (now (17)(a)).

39-51-202. Employer defined. "Employer" means:

(1) any employing unit whose total annual payroll within either the current or preceding calendar year exceeds the sum of $1,000;

(2) any individual or employing unit which acquired the organization, trade, or business or substantially all of the assets thereof of another which at the time of such acquisition was an employer subject to this chapter;

(3) any individual or employing unit which acquired the organization, trade, or business or substantially all the assets thereof of another employing unit not an employer subject to this chapter and which, if subsequent to such acquisition it were treated as a single unit with such other employing unit, would be an employer under subsection (1) of this section;

(4) any employing unit not an employer by reason of any other subsection of this section for which, within either the current or preceding calendar year,

service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions paid into a state unemployment fund or an employing unit which, as a condition for approval of this chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required pursuant to such act to be an employer under this chapter;

(5) any employing unit which, having become an employer under subsection (1), (2), (3), or (4) has not, under 39-51-1101, ceased to be an employer subject to this chapter; or

(6) for the effective period of its election pursuant to 39-51-1102, any other employing unit which has elected to become fully subject to this chapter.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. , Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. , Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part); amd. Sec. 37, Ch. 97, L. 1979; amd. Sec. 2, Ch. 125, L. 1985.

Compiler's Comments

1985 Amendment: In (1) increased dollar mount from $500 to $1,000.

Cross-References

"Annual payroll" defined, 39-51-201.
"Contributions" defined, 39-51-201.
"Employing unit" defined, 39-51-201.
"Fund" defined, 39-51-201.

39-51-203. Employment defined. (1) "Employment", subject to other provisions of this section, means service by an individual or by an officer of corporation, including service in interstate commerce, performed for wages r under any contract of hire, written or oral, express or implied.

(2) (a) The term "employment" includes an individual's entire service performed within or both within and without this state if:

(i) the service is localized in this state; or

(ii) the service is not localized in any state but some of the service is performed in this state and:

(A) the base of operations or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or

(B) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(b) Service is considered to be localized within a state if:

(i) the service is performed entirely within such state; or

(ii) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(3) Service not covered under subsection (2) of this section and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment insurance law of any other state r of the federal government is considered to be employment subject to this chapter if the individual performing such services is a resident of this state nd the department approves the election of the employing unit for whom

such services are performed that the entire service of such individual is considered to be employment subject to this chapter.

(4) Service performed by an individual for wages is considered to be employment subject to this chapter unless and until it is shown to the satisfaction of the department that:

(a) such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract and in fact;

(b) such service is either outside the usual course of the business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(c) such individual is customarily engaged in an independently established trade, occupation, profession, or business.

(5) The term "employment" includes service performed after December 31, 1971, by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state. The term "employment" includes service performed after July 1, 1975, by all individuals, including without limitations those individuals who work for the state of Montana, its university, any of its colleges, public schools, components or units thereof, or any local government unit and one or more other states or their instrumentalities or political subdivisions whose services are compensated by salary or wages.

(6) The term "employment" includes service performed after December 31, 1971, by an individual in the employ of a religious, charitable, scientific, literary, or educational organization.

(7) (a) The term "employment" includes the service of an individual who is a citizen of the United States performed outside the United States, except in Canada, after December 31, 1971, in the employ of an American employer, other than service which is considered employment under the provisions of subsection (2) of this section or the parallel provisions of another state's law, if:

(i) the employer's principal place of business in the United States is located in this state;

(ii) the employer has no place of business in the United States, but:

(A) the employer is an individual who is a resident of this state;

(B) the employer is a corporation which is organized under the laws of this state; or

(C) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(iii) none of the criteria of sections (7)(a)(i) and (7)(a)(ii) of this subsection are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service under the law of this state.

(b) An "American employer", for purposes of this subsection, means a person who is:

(i) an individual who is a resident of the United States;

(ii) a partnership if two-thirds or more of the partners are residents of the United States;

(iii) a trust if all of the trustees are residents of the United States; or

(iv) a corporation organized under the laws of the United States or of any state.

(8) Agricultural labor exempted under 39-51-204 is considered employment subject to this chapter effective January 1, 1978, whenever the employing unit pays $20,000 or more in cash to workers for agricultural labor in any quarter in the current or preceding calendar year or employs 10 or more workers in agricultural labor on 20 days in 20 different weeks during the current or preceding calendar year. If an employer is otherwise subject to the chapter and has agricultural employment, all employees are covered under the chapter regardless of the amount of money expended for agricultural purposes.

(9) Domestic service exempted under 39-51-204(1)(b) is considered employment subject to this chapter effective January 1, 1978, whenever the employing unit pays $1,000 or more in cash for domestic service in any quarter during the current or preceding calendar year. If an employer is otherwise subject to the chapter and has domestic employment, all employees are covered under the chapter regardless of the amount of money expended for domestic purposes.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. , Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 38, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" in (3) and (4).

Cross-References

"Benefits" defined, 39-51-201.
"Contributions" defined, 39-51-201.
"Department" defined, 39-51-201.
"Employing unit" defined, 39-51-201.
"Hospital" defined, 39-51-201.
"Institution of higher education" defined, 39-51-201.
"State" defined, 39-51-201.
"Wages" defined, 39-51-201.
"Week" defined, 39-51-201.

39-51-204. Exclusions from definition of employment. (1) The term "employment" does not include:

(a) agricultural labor, except as provided in 39-51-203(8);

(b) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-203(9);

(c) service performed as an officer or member of the crew of a vessel on he navigable waters of the United States;

(d) service performed by an individual in the employ of his son, daughter, r spouse and service performed by a child under the age of 21 in the employ f his father or mother;

(e) service performed in the employ of any other state or its political sub-ivisions or of the United States government or of an instrumentality of any ther state or states or their political subdivisions or of the United States, xcept that national banks organized under the national banking law shall not e entitled to exemption under this subsection and shall be subject to this hapter the same as state banks, provided that such service is excluded from employment as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act;

(f) service with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of congress, provided that the department must enter into agreements with the proper agencies under such act of congress, which agreements shall become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under such act of congress or who have, after acquiring potential rights to unemployment insurance under such act of congress, acquired rights to benefits under this chapter;

(g) services performed in the delivery and distribution of newspapers or shopping news from house to house and business establishments by an individual under the age of 18 years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution;

(h) services performed by real estate, securities, and insurance salesmen paid solely by commissions and without guarantee of minimum earnings;

(i) service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university or by the spouse of such a student if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university and such employment will not be covered by any program of unemployment insurance;

(j) service performed by an individual who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution which combines academic instruction with work experience if such service is an integral part of such program and such institution has so certified to the employer, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(k) service performed in the employ of a hospital if such service is performed by a patient of the hospital;

(l) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. "Regularly employed" means the services are performed during at least 24 days in the same quarter.

(2) "Employment" does not include elected public officials.

(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

(a) in the employ of a church or convention or association of churches or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(b) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(c) in the employ of a school which is not an institution of higher education, prior to December 31, 1977;

(d) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for ndividuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;

(e) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision thereof by an individual receiving such work elief or work training; or

(f) for a state prison or other state correctional or custodial institution by n inmate of that institution.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. ec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. ec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. ec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. , Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. , Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part); amd. Sec. 2, Ch. 7, L. 1979; amd. Sec. 1, Ch. 67, L. 1979; amd. Sec. 39, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, . 1981; amd. Sec. 1, Ch. 357, L. 1983; amd. Sec. 3, Ch. 125, L. 1985.

ompiler's Comments

1985 Amendment: Near beginning of (1)(j) ter "service performed by an individual", eleted "under the age of 22"; and in (1)(l) serted definition of "regularly employed".

1983 Amendment: In (1)(d), increased the age nit for purposes of the child services exclusion om 18 to 21.

1981 Amendment: Substituted "department" r "division" in (1)(f).

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

"Benefits" defined, 39-51-201.

"Calendar quarter" defined, 39-51-201.

"Department" defined, 39-51-201.

"Hospital" defined, 39-51-201.

"Institution of higher education" defined, 39-51-201.

"State" defined, 39-51-201.

39-51-205. Agricultural labor defined. (1) The term "agricultural bor" includes all services performed prior to January 1, 1972, which was gricultural labor as defined in this section prior to such date and munerated services performed after December 31, 1971:

(a) on a farm, in the employ of any person in connection with cultivating e soil, or in connection with raising or harvesting any agricultural or horti- ltural commodity, including the raising, shearing, feeding, caring for, train- g, and management of livestock, bees, poultry, and fur-bearing animals and ldlife;

(b) in the employ of the owner or tenant or other operator of a farm in nnection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment or in salvaging timber clearing land of brush and other debris left by a hurricane if the major part such service is performed on a farm;

(c) in connection with the production or harvesting of any commodity mmonly known as agricultural commodities or in connection with the tching of poultry or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes, except where such ditches, canals, reservoirs, or waterways are owned and operated by government entities;

(d) in the employ of the operator of a farm or a group of operators of farms or a cooperative organization of which such operators are members in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market in its unmanufactured state any agricultural or horticultural commodity, but only if such operator or operators produced more than one-half of the commodity with respect to which such service is performed.

(2) The provisions of subsections (1)(a), (1)(b), (1)(c), and (1)(d) of this section shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption or on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

(3) As used in this section, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part).

39-51-206. Agricultural labor — who treated as employer of member of a crew furnished by a crew leader. (1) For the purposes of 39-51-203, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader if:

(a) such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963 or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment which is provided by such crew leader; and

(b) such individual is not an employee of such other person within the meaning of 39-51-202(1), 39-51-203(8), or 39-51-203(9).

(2) In the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subsection (1):

(a) such other person and not the crew leader shall be treated as the employer of such individual; and

(b) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader, either on his own behalf or on behalf of such other person, for the service in agricultural labor performed for such other person.

(3) The term "crew leader" means an individual who:

(a) furnishes individuals to perform service in agricultural labor for any other person;

(b) pays, either on his own behalf or on behalf of such other person, the individuals so furnished by him for the service in agricultural labor performed by them; and

(c) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. , Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. , Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part).

Part 3

General Administrative Provisions

39-51-301. Administration — duties and powers of department. 1) It shall be the duty of the department to administer this chapter and it hall have power and authority to adopt, amend, or rescind such rules, to mploy such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end.

(2) The department shall determine its own organization and methods of rocedure in accordance with the provisions of this chapter and shall have an fficial seal, which shall be judicially noticed.

(3) Whenever the department believes that a change in contribution or enefit rates will become necessary to protect the solvency of the fund, it hall promptly so inform the governor and the legislature and make recommendations with respect thereto.

(4) The department and the board may issue subpoenas and compel testimony and the production of evidence, including books and records, in regard o any investigation or proceeding under this chapter.

History: En. Subd. (a), Sec. 11, Ch. 137, L. 1937; amd. Sec. 6, Ch. 156, L. 1961; amd. Sec. , Ch. 93, L. 1969; amd. Sec. 11, Ch. 368, L. 1975; R.C.M. 1947, 87-120; amd. Sec. 1, Ch. 349, 1981; amd. Sec. 11, Ch. 125, L. 1983; amd. Sec. 4, Ch. 125, L. 1985.

ompiler's Comments

1985 Amendment: At end of (1) deleted last ntence that read: "Such rules shall be effective on publication in the manner, not inconstent with the provisions of this chapter, hich the department shall prescribe"; and serted (4).

1983 Amendment: Deleted former (3), which ad: "The department shall report as provided 2-7-102. Such report shall include a balance eet of the money in the fund in which there all be provided, if possible, a reserve against e liability in future years to pay benefits in cess of the then-current contributions, which serve shall be set up by the department in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period."

1981 Amendment: Substituted "department" for "division" throughout the section.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

"Benefits" defined, 39-51-201.

"Contributions" defined, 39-51-201.

"Department" defined, 39-51-201.

"Fund" defined, 39-51-201.

39-51-302. Administrative rules. The department may adopt procedural and substantive rules necessary to implement this chapter.

History: En. Subd. (b), Sec. 11, Ch. 137, L. 1937; amd. Sec. 12, Ch. 368, L. 1975; R.C.M. 1947, 87-121; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 5, Ch. 125, L. 1985.

Compiler's Comments

1985 Amendment: Substituted present sentence for: "General and special rules may be adopted, amended, or rescinded by the department only after public hearing or opportunity to be heard thereon, of which proper notice has been given. General rules shall become effective 10 days after filing with the secretary of state and publication in one or more newspapers of general circulation in this state. Special rules shall become effective 10 days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Regulations may be adopted, amended, or rescinded by the department and shall become effective in the manner and at the time prescribed by law."

1981 Amendment: Substituted "department" for "division" throughout the section.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

"Department" defined, 39-51-201.

39-51-303. Publication and distribution of materials. The department shall cause to be printed for distribution to the public the text of this chapter, the department's regulations and general and special rules, annual reports to the governor, and any other material the department deems relevant and suitable and shall furnish the same to any person upon application therefor.

History: En. Subd. (c), Sec. 11, Ch. 137, L. 1937; amd. Sec. 13, Ch. 368, L. 1975; R.C.M. 1947, 87-122; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

Cross-References

"Department" defined, 39-51-201.

39-51-304. Personnel. The department shall hire personnel to administer this chapter in accordance with merit system principles adopted by the department of administration.

History: En. Subd. (d), Sec. 11, Ch. 137, L. 1937; amd. Sec. 14, Ch. 368, L. 1975; R.C.M. 1947, 87-123; amd. Sec. 40, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 6, Ch. 125, L. 1985.

Compiler's Comments

1985 Amendment: Deleted former (1) and (2) that read: "(1) Except as otherwise provided, the department is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties under this chapter. The department may delegate to any such persons such power and authority as it considers reasonable and proper for the effective administration of this chapter and may in its discretion bond any person handling money or signing checks hereunder.

(2) No person who is an officer or committee member of any political party organization or who holds or is a candidate for any public office may be appointed or employed under this chapter"; inserted "personnel to adminster this chapter"; and at end substituted "department of administration" for "merit system council".

1981 Amendment: Substituted "department" for "division" throughout the section.

Cross-References

Merit System Council — allocation — composition, 2-15-1006.

Merit System, 2-18-105.

"Department" defined, 39-51-201.

39-51-305. Department to appoint appeals referees. To hear and decide disputed claims, the department shall appoint such impartial salaried appeals referees as are necessary for the proper administration of this chapter in accordance with 39-51-304. No person shall participate on behalf of the department in any case in which he is an interested party. The department may designate alternates to serve in the absence or disqualification of an appeals referee.

History: **En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(d); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 7, Ch. 125, L. 1985.**

Compiler's Comments

1985 Amendment: Near beginning before "appeals referees", inserted "salaried"; and near middle, before "in accordance with", deleted "consisting of salaried examiners selected".

1981 Amendment: Substituted "department" for "division" throughout the section.

Cross-References

"Department" defined, 39-51-201.

39-51-306. Repealed. Sec. 5, Ch. 349, L. 1981.

History: **En. Subd. (b), Sec. 10, Ch. 137, L. 1937; amd. Sec. 2, Ch. 132, L. 1969; amd. Sec. 10, Ch. 368, L. 1975; R.C.M. 1947, 87-118.**

39-51-307. Department to create employment service. (1) The department shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this chapter and for the purpose of performing such duties as are within the purview of the act of congress entitled, "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes", approved June 6, 1933 (48 Stat. 113; U.S.C. Title 29, Sec. 49 (c)), as amended.

(2) The department shall be charged with the duty to cooperate with any official or agency of the United States having power or duties under the provisions of the act of congress, as amended, and to do and perform all things necessary to secure to this state the benefits of the act of congress, as amended, in the promotion and maintenance of a system of public employment offices.

(3) The provisions of the act of congress, as amended, are hereby accepted by this state in conformity with section 4 of said act, and this state will observe and comply with the requirements thereof. The department is hereby designated and constituted the agency of this state for the purpose of said act.

(4) For the purpose of establishing and maintaining free public employment offices, the department is authorized to enter into agreements with any political subdivisions of this state or with any private, nonprofit organization and as a part of any such agreement the department may accept money, services, or quarters as a contribution to the employment service account.

History: **En. Sec. 12, Ch. 137, L. 1937; amd. Sec. 6, Ch. 164, L. 1941; amd. Sec. 21, Ch. 368, L. 1975; R.C.M. 1947, 87-132; amd. Sec. 2, Ch. 349, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department" or "division" throughout the section; deleted create a bureau to be known as the Montana tate employment service, which bureau shall" fter "shall" at the beginning of (1); deleted The bureau shall be administered by a full-time salaried director" from the end of (1); substituted "department" for "employment security division" in the second sentence in (3); deleted "The division is directed to appoint the personnel of the Montana state employment service" from the end of (3).

Cross-References

"Department" defined, 39-51-201.

39-51-308. Acquisition and disposition of property by department. 1) Subject to the approval of the department of administration, the department may purchase such equipment, supplies, and real property as it may deem necessary and proper. The title to any real property purchased shall be taken in the name of the state of Montana.

(2) Subject to the approval of the department of administration, the department may sell any equipment, supplies, or real property previously acquired by it, and the proceeds of such sale shall be deposited into the unemployment insurance administration fund.

(3) In the event the duties or any part thereof of the department shall be at any time in the future surrendered to or taken over by the federal government or any agency thereof, the department, with the approval of the department of administration, may lease such equipment and real property to the federal government or such agency, but the title thereto shall remain in the state of Montana.

History: En. as Sec. 11-A of Ch. 137, L. 1937 by Sec. 6, Ch. 233, L. 1943; amd. Sec. 8, Ch. 171, L. 1957; amd. Sec. 19, Ch. 368, L. 1975; amd. Sec. 17, Ch. 343, L. 1977; R.C.M. 1947, 87-130; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

Cross-References

Department of Administration, Title 2, ch. 15, part 10.

"Department" defined, 39-51-201.

"Fund" defined, 39-51-201.

39-51-309. Representation of department and state in court. (1) In any civil action to enforce the provisions of this chapter the department and the state may be represented by any qualified attorney who is employed by the department and is designated by it for this purpose or, at the department's or board's request, by the attorney general.

(2) All criminal actions for violation of any provision of this chapter or of any rules issued pursuant thereto shall be prosecuted by the attorney general of the state or, at his request and under his direction, by the county attorney of the county wherein the crime was committed.

History: En. Sec. 17, Ch. 137, L. 1937; amd. Sec. 8, Ch. 164, L. 1955; amd. Sec. 31, Ch. 368, L. 1975; R.C.M. 1947, 87-146; amd. Sec. 41, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout (1).

Cross-References

Duties of Attorney General, 2-15-501.

"Department" defined, 39-51-201.

39-51-310. Function of board. The board shall act in a quasi-judicial capacity for the hearing of disputes concerning the administration of Montana's unemployment insurance laws.

History: En. 82A-1008 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1008(4).

Cross-References

"Board" defined, 39-51-201.

Part 4

Financial Administration

39-51-401. Unemployment insurance fund — establishment and control. There is hereby established separate and apart from all public money or funds of this state a fund in the expendable trust fund type known as the unemployment insurance fund, which shall be administered by the department exclusively for the purposes of this chapter. Any reference to the unemployment insurance fund in this code means the unemployment insurance expendable trust fund. All money in the fund shall be mingled and undivided. This fund shall consist of:

(1) all contributions collected under this chapter and payments made in lieu of contributions as provided in 39-51-1124 through 39-51-1126;

(2) interest earned upon any money in the fund;

(3) any property or securities acquired through the use of money belonging to the fund;

(4) all earnings of such property or securities; and

(5) all money credited to this state's account in the unemployment trust fund pursuant to section 903 of the Social Security Act, as amended.

History: En. Subd. (a), Sec. 9, Ch. 137, L. 1937; amd. Sec. 2, Ch. 190, L. 1945; amd. Sec. 4, Ch. 171, L. 1957; amd. Sec. 206, Ch. 147, L. 1963; amd. Sec. 1, Ch. 88, L. 1971; amd. Sec. 5, Ch. 368, L. 1975; R.C.M. 1947, 87-111; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 42, Ch. 397, L. 1979; amd. Sec. 17, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 21, Ch. 281, L. 1983.

Compiler's Comments

1983 Amendment: In first sentence, substituted "a fund in the expendable trust fund type known as the unemployment insurance fund" for "an account in the agency fund known as the unemployment insurance account"; in second sentence, substituted "expendable trust fund" for "account in the agency fund"; and changed "account" to "fund", referring to the unemployment insurance fund, in four places.

1981 Amendment: Substituted "department" for "division" in the first sentence.

Cross-References

"Contributions" defined, 39-51-201.

"Department" defined, 39-51-201.

"Fund" defined, 39-51-201.

39-51-402. Unemployment insurance fund — custodian — accounts and deposits. (1) The commissioner of labor and industry is the ex officio treasurer and custodian of the unemployment insurance fund and shall administer such fund in accordance with this chapter. He shall maintain within the fund three separate accounts:

(a) a clearing account;

(b) an unemployment trust fund account; and

(c) a benefit account.

(2) All money payable to the unemployment insurance fund, upon receipt by the department, must be immediately deposited in the clearing account. Refunds payable pursuant to 39-51-1110 may be paid from the clearing account. After clearance thereof, all other money in the clearing account must be immediately deposited with the secretary of the treasury of the United States to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act, as amended.

(3) The benefit account consists of all money requisitioned for the payment of benefits from this state's account in the unemployment trust fund.

(4) Except as herein otherwise provided, money in the clearing and benefit accounts may be deposited in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium may be paid out of the unemployment insurance fund.

History: En. Subd. (b), Sec. 9, Ch. 137, L. 1937; amd. Sec. 5, Ch. 171, L. 1957; amd. Sec. 207, Ch. 147, L. 1963; amd. Sec. 6, Ch. 368, L. 1975; R.C.M. 1947, 87-112; amd. Sec. 2, Ch.

57, L. 1979; amd. Sec. 43, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 22, Ch. 281, L. 1983; amd. Sec. 8, Ch. 125, L. 1985.

Compiler's Comments

1985 Amendment: In (1) at beginning, substituted "commissioner of labor and industry" for "state treasurer" and at end of first sentence, after "in accordance with", substituted "this chapter" for "the directions of the department and shall issue his warrants upon it in accordance with such regulations as the department shall prescribe"; in (2) in first sentence, substituted "immediately deposited" for "forwarded to the treasurer who shall immediately deposit it", at end of second sentence deleted "upon warrants issued by the treasurer under the direction of the department", and deleted from end of subsection "any provision of law in this state relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state to the contrary notwithstanding"; in (4) after "may be deposited", deleted "by the treasurer, under the direction of the department"; and deleted former (5) that read: "The treasurer shall give a separate bond conditioned upon the faithful performance of his duties as custodian of the unemployment insurance fund in an amount fixed by the department and in a form prescribed by law or approved by the attorney general. Premiums for the bond shall be paid from the unemployment insurance administration account."

1983 Amendment: Throughout section, changed references to unemployment insurance account to unemployment insurance fund.

1981 Amendment: Substituted "department" for "division" throughout the section.

Cross-References

Ex officio State Treasurer, 2-15-1002.
"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.
"Fund" defined, 39-51-201.

39-51-403. Money to be requisitioned from unemployment trust fund solely for payment of benefits — exception. (1) Money shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the department, except that money credited to this state's account pursuant to section 903 of the Social Security Act, as amended, may also be withdrawn for the payment of expenses for the administration of this chapter and of public employment offices, as provided by this chapter.

(2) The department shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to this state account therein, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof, the treasurer shall deposit such money in the benefit account and shall issue his warrants for the payment of benefits solely from such benefit account.

(3) Expenditures of such money in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody.

(4) Any balance of money requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for and may be utilized for the payment of benefits during succeeding periods or, in the discretion of the department, shall be redeposited with the secretary of the treasury of the United States to the credit of this state's account in the unemployment trust fund, as provided in 39-51-402.

History: En. Subd. (c), Sec. 9, Ch. 137, L. 1937; amd. Sec. 6, Ch. 171, L. 1957; amd. Sec. 7, Ch. 368, L. 1975; R.C.M. 1947, 87-113(a); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

Cross-References

"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.
"Fund" defined, 39-51-201.

39-51-404. Administrative expenses. (1) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to section 903 of the Social Security Act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this chapter pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

(a) specifies the purposes for which such money is appropriated and the amounts appropriated therefor;

(b) limits the period within which such money may be expended to a period ending not more than 2 years after the date of the enactment of the appropriation law; and

(c) limits the amount which may be used during any 12-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which the aggregate of the amounts credited to the account of this state pursuant to section 903 of the Social Security Act, as amended, during the same 12-month period and the 34 preceding 12-month periods exceeds the aggregate of the amounts used pursuant to this section and charged against the amounts credited to the account of this state during any of such 35 12-month periods.

(2) For the purposes of this section, amounts used during any such 12-month period shall be charged against equivalent amounts which were first credited and which are not already so charged, except that no amount used for administration during any such 12-month period may be charged against any amount credited during such a 12-month period earlier than the 34th preceding such period. Money requisitioned for the payment of expenses of administration pursuant to this section shall be deposited in the unemployment insurance administration account but, until expended, shall remain a part of the unemployment insurance fund.

(3) The department shall maintain a separate record of the deposit, obligation, expenditure, and return of funds so deposited. If any money so deposited is for any reason not to be expended for the purpose for which it was appropriated or if it remains unexpended at the end of the period specified by the law appropriating such money, it shall be withdrawn and returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund.

(4) Beginning with the third quarter of 1983, an assessment equal to .1% of all taxable wages provided for in 39-51-1108 and .05% of total wages paid by employers not covered by an experience rating must be levied against and paid by all employers and may be used by the department for administrative purposes. All such assessments must be deposited in the unemployment insurance administration account provided for in 39-51-406 and used as appropriated by the legislature. Any assessments deposited to the unemployment insurance administration account that are not appropriated by the legislature must be transferred to the unemployment trust fund account provided for in 39-51-402.

History: En. Subd. (c), Sec. 9, Ch. 137, L. 1937; amd. Sec. 6, Ch. 171, L. 1957; amd. Sec. 7, Ch. 368, L. 1975; R.C.M. 1947, 87-113(b); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349,

L. 1981; amd. Sec. 1, Ch. 251, L. 1983; amd. Sec. 23, Ch. 281, L. 1983; (4)En. Sec. 1, Ch. 304, L. 1983; amd. Sec. 2, Ch. 461, L. 1985.

Compiler's Comments

1985 Amendment: In (4) after first phrase, substituted "an assessment equal to .1% of all taxable wages provided for in 39-51-1108" for ".1% of employer contributions received by the department", near end of first sentence, after "rating", inserted "must be levied against and paid by all employers and", and in two places substituted "assessments" for "contributions".

1983 Amendments: Chapter 251, in (1)(c), near middle before "preceding 12-month periods" changed "four" to "34" and near end, changed "five" to "35"; and near middle of (2), before "preceding such period" changed "fourth" to "34th".

Chapter 281, in last sentence of (2), after "unemployment insurance administration", changed "fund" to "account".

Chapter 304 enacted (4).

1981 Amendment: Substituted "department" for "division" in (3).

Cross-References

"Department" defined, 39-51-201.

"Fund" defined, 39-51-201.

39-51-405. Signatures required on warrants. All warrants issued by the treasurer for payment pursuant to 39-51-403 or 39-51-404 shall bear the signature of the treasurer and the countersignature of a member of the department or its duly authorized agent for that purpose.

History: En. Subd. (c), Sec. 9, Ch. 137, L. 1937; amd. Sec. 6, Ch. 171, L. 1957; amd. Sec. 7, Ch. 368, L. 1975; R.C.M. 1947, 87-113(c); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division".

Cross-References

"Department" defined, 39-51-201.

39-51-406. Unemployment insurance administration account. (1) There is hereby created an account in the federal special revenue fund to be known as the unemployment insurance administration account. All moneys which are deposited, appropriated, or paid into this account are hereby appropriated and made available to the department. All moneys in the account shall be expended solely for the purpose of defraying the costs of administration of this chapter and costs of administration of such other legislation as shall be specifically delegated to the department for administration by the legislature.

(2) All moneys received and deposited in said account for administration expense from the United States or any agency thereof pursuant to section 302, Title III, of the Social Security Act shall be expended solely for the purpose and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this chapter.

(3) The account shall consist of:

(a) all moneys received from the United States or any agency thereof pursuant to section 302, Title III, of the Social Security Act, as amended;

(b) all moneys appropriated by the state from the general fund for the purpose of administering this chapter; and

(c) all moneys, trust funds, supplies, facilities, or services furnished, deposited, paid, and received from:

(i) the United States or any agency thereof;

(ii) this state or any agency thereof;

(iii) any other state or any of its agencies;

(iv) political subdivisions of the state; or

(v) any other source for administrative expense and purpose.

(4) Notwithstanding any provisions of this section, all money requisitioned and deposited in this account pursuant to 39-51-403 through 39-51-405 shall

remain part of the unemployment insurance fund and shall be used only in accordance with the conditions specified in 39-51-403 through 39-51-405.

(5) All moneys in this account shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other accounts. Any balance in this account shall not lapse at any time but shall be continuously available to the department for the expenditure consistent with this chapter.

(6) The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties in connection with the unemployment insurance administration account in an amount to be fixed by the department and in a form prescribed by law or approved by the attorney general. The premiums for such bond and the premiums for the bond given by the treasurer for the unemployment insurance fund under 39-51-402 shall be paid from the money in the unemployment insurance administration account.

(7) Any reference to the unemployment insurance administration fund in this code shall be taken to mean the unemployment insurance administration account in the federal special revenue fund.

History: En. Subd. (a), Sec. 13, Ch. 137, L. 1937; amd. Sec. 7, Ch. 164, L. 1941; amd. Sec. 4, Ch. 190, L. 1945; amd. Sec. 4, Ch. 164, L. 1955; amd. Sec. 9, Ch. 171, L. 1957; amd. Sec. 208, Ch. 147, L. 1963; amd. Sec. 22, Ch. 368, L. 1975; R.C.M. 1947, 87-133; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 2, Ch. 277, L. 1983; amd. Sec. 24, Ch. 281, L. 1983; amd. Sec. 1, Ch. 369, L. 1983.

Compiler's Comments

1983 Amendments: Chapters 277 and 281, in (1) and (7), substituted "federal special revenue fund" for "federal and private revenue fund". Chapter 281, in (4) and (6) after "unemployment insurance", changed "account" to "fund".

Chapter 369, deleted subsection under (3), which provided "all interest and penalties collected on past due contributions as provided by 39-51-1301".

1981 Amendment: Substituted "department" for "division" in (1), (5), and (6).

Cross-References

"Contributions" defined, 39-51-201.
"Department" defined, 39-51-201.
"Fund" defined, 39-51-201.
"State" defined, 39-51-201.

39-51-407. Reimbursement of fund by state. (1) This state recognizes its obligation to replace, and hereby pledges the faith of this state that funds will be provided in the future and applied to the replacement of any of the money received after July 1, 1941, from the United States or any agency thereof under Title III of the Social Security Act, any unencumbered balances in the unemployment insurance administration account as of that date, any money thereafter granted to this state pursuant to the provisions of the Wagner-Peyser Act, and any money made available by the state or its political subdivisions and matched by such money granted to this state pursuant to the provisions of the Wagner-Peyser Act which the secretary of labor finds have, because of any action or contingency, been lost or have been expended for purposes other than or in amounts in excess of those found necessary by the secretary of labor for the proper administration of this chapter. Such money shall be promptly supplied by money furnished by the state of Montana or any of its subdivisions for the use of the department and used only for purposes approved by the secretary of labor. The department shall, if necessary, promptly report to the governor and the governor to the legislature the amount required for such replacement.

(2) This section shall not be construed to relieve this state of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of Title III of the Social Security Act.

History: En. as Subd. (b) of Sec. 13, Ch. 137, L. 1937 by Sec. 7, Ch. 164, L. 1941; amd. Sec. 5, Ch. 164, L. 1955; amd. Sec. 23, Ch. 368, L. 1975; R.C.M. 1947, 87-134; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 25, Ch. 281, L. 1983.

Compiler's Comments

1983 Amendment: Near middle of first sentence after "unemployment insurance administration", changed "fund" to "account".

1981 Amendment: Substituted "department" for "unemployment insurance division" in the next to last sentence of (1); substituted "department" for "division" in the last sentence of (1).

Cross-References

"Department" defined, 39-51-201.

"Fund" defined, 39-51-201.

39-51-408. Advances from federal unemployment trust fund. (1) The department is authorized to apply for advances on behalf of the state of Montana from its account in the federal unemployment trust fund and to accept responsibility for repayment of such advances in accordance with the conditions specified by congress.

(2) (a) The interest cost, if any, from such advances must be assessed against employers subject to experience rating. Interest cost may not be assessed against state or local government employers covered by 39-51-1212 or against nonprofit organizations making payments in lieu of contributions pursuant to 39-51-1124.

(b) An assessment must be made beginning with the calendar year following the calendar year in which it became necessary to apply for an advance from the federal unemployment trust fund and after the interest charges on the advance have been determined. The rate will be determined by the department based upon the interest charges. This rate must be applied to the employer's taxable wages and be submitted in the same manner as regular contributions but as a separate payment.

(c) The amount received must be deposited in the unemployment insurance account and used to pay interest costs. Any surplus must be used to pay benefits. The department shall maintain separate records of deposits, obligations, and expenditures of all money collected pursuant to this section.

History: En. Sec. 1, Ch. 273, L. 1983.

Part 5

Governmental Cooperation

39-51-501. State-federal cooperation. (1) In the administration of this chapter, the department shall:

(a) cooperate to the fullest extent consistent with the provisions of this chapter with the secretary of labor, pursuant to the provisions of the Social Security Act, as amended;

(b) make such reports in such form and containing such information as the secretary of labor may from time to time require and shall comply with such provisions as the secretary of labor may from time to time find necessary to assure the correctness and verification of such reports; and

(c) comply with the regulations prescribed by the secretary of labor governing the expenditures of such sums as may be allotted and paid to this state under Title III of the Social Security Act, as amended, for the purpose of assisting in the administration of this chapter.

(2) The department shall cooperate with the secretary of labor in the administration of any act of congress establishing unemployment insurance benefits or similar benefits for federal employees and veterans or ex-service personnel of the armed forces of the United States and shall do so in such manner as may be deemed advisable and expedient in order to carry out the purpose of this chapter.

(3) The department is hereby authorized and empowered to perform any and all acts, including the execution of agreements and contracts which may be required under and pursuant to any act passed by the congress of the United States, authorizing the extension of unemployment insurance benefits by federal law if the department in its discretion deems it advisable to perform such acts.

(4) Upon request therefor, the department shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this chapter.

History: En. Subd. (i), Sec. 11, Ch. 137, L. 1937; amd. Sec. 7, Ch. 171, L. 1957; amd. Sec. 7, Ch. 156, L. 1961; amd. Sec. 17, Ch. 368, L. 1975; R.C.M. 1947, 87-128; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

Cross-References

"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.

39-51-502. Cooperation with other agencies. (1) The department shall afford reasonable cooperation with any government agency charged with war effort or postwar planning responsibilities or with the administration of any system of unemployment allowances or unemployment assistance or of any program designed to prevent or relieve unemployment.

(2) The department may make and may cooperate with other appropriate state agencies in making studies as to the practicability and probable cost of possible new state-administered social security programs and the relative desirability of state rather than national action in any such field.

(3) The department shall fully cooperate with the agencies of other states and shall make every proper effort within its means to oppose and prevent any further action which would in its judgment tend to effect complete or substantial federalization of state unemployment insurance funds or state unemployment insurance and employment security programs or any part of the social security program.

History: En. as Sec. 11-B of Ch. 137, L. 1937 by Sec. 6, Ch. 233, L. 1943; amd. Sec. 20, Ch. 368, L. 1975; R.C.M. 1947, 87-131; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

Cross-References

"Department" defined, 39-51-201.
"State" defined, 39-51-201.

39-51-503. Agreements with railroad retirement board. The department is hereby authorized to cooperate with and enter into agreements with the railroad retirement board with respect to establishment, maintenance, and use of employment service facilities and to make available to the railroad retirement board the records of the department relating to employer's status and contributions received from employers covered by the Railroad Unemployment Insurance Act, together with employee wage records and such other data as the railroad retirement board may deem necessary or desirable for the administration of the Railroad Unemployment Insurance Act (52 Stat. 1094). Any money received by the department from the railroad retirement board or any other governmental agency with respect to the establishment, maintenance, and use of employment service facilities shall be paid into and credited the proper division of the unemployment insurance administration fund set up and established under 39-51-406 and 39-51-407.

History: En. Sec. 2, Ch. 167, L. 1939; amd. Sec. 9, Ch. 368, L. 1975; R.C.M. 1947, 87-116; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 3, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section; deleted "Montana state" before "employment service facilities" in the first sentence; deleted "state" before "employment service facilities" in the last sentence.

Cross-References

"Department" defined, 39-51-201.

39-51-504. Reciprocal benefit arrangements. (1) The department is hereby authorized to enter into arrangements with the appropriate agencies of other states or the federal government whereby individuals performing services in this and other states for a single employing unit under circumstances not specifically provided for in this chapter or under similar provisions of the unemployment insurance laws of such other states shall be deemed to be engaged in employment performed entirely within this state or within one of such other states and whereby potential rights to benefits accumulated under the unemployment insurance laws of several states or under such a law of the federal government or both may constitute the basis for the payment of benefits through a single appropriate agency under terms which the department finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.

(2) The department shall participate in any arrangements, approved by the U.S. secretary of labor, with the appropriate agencies of the other states or of the federal government whereby wages or services upon the basis of which an individual may become entitled to benefits under the unemployment insurance law of another state or of the federal government shall be deemed to be wages for employment by employers for benefit purposes, provided that:

(a) in any instance involving the combining of an individual's wages and employment covered under two or more state unemployment insurance laws, that the base period of a single state law will be used;

(b) such combining of wages will not involve the duplicate use of such wage credits; and

(c) such other state agency or agency of the federal government has agreed to reimburse the unemployment insurance fund for such portion of benefits paid under this chapter upon the basis of such wages or services as the department finds will be fair and reasonable as to all affected interests, and whereby the department will reimburse other state or federal agencies charged with the administration of unemployment insurance laws with such reasonable portion of benefits paid under the law of any such other states or of the federal government upon the basis of employment or wages for employment by employers as the department finds will be fair and reasonable to all affected interests. Reimbursements so payable shall be deemed to be benefits for the purposes of this chapter.

(3) The department is hereby authorized to make to other state or federal agencies reimbursements from or to the unemployment insurance fund in accordance with arrangements made pursuant to this section.

History: En. Subd. (j), Sec. 11, Ch. 137, L. 1937; amd. Sec. 3, Ch. 190, L. 1945; amd. Sec. 1, Ch. 91, L. 1971; amd. Sec. 18, Ch. 368, L. 1975; R.C.M. 1947, 87-129; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

Cross-References

"Base period" defined, 39-51-201.
"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.
"Employing unit" defined, 39-51-201.
"Fund" defined, 39-51-201.
"State" defined, 39-51-201.
"Wages" defined, 39-51-201.

Part 6

Records and Reports

39-51-601. Department to maintain wage record. The department shall maintain a record of the wages paid to an individual in accordance with wages earned by him for employment by employers during each quarter.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(f); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division".

Cross-References

"Department" defined, 39-51-201.
"Wages" defined, 39-51-201.

39-51-602. Method to be used by department in keeping wage records. Wage records kept by the department for the purposes of this chapter prior to January 1, 1941, shall be kept on the basis of wages payable and wage records kept by the department for the purposes of this chapter after January 1, 1941, shall be kept on the basis of wages paid.

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(part); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

Cross-References

"Department" defined, 39-51-201.
"Wages" defined, 39-51-201.

39-51-603. Employing unit to keep records and make reports. (1) Each employing unit shall keep true and accurate work records containing such information as the department may prescribe. Those records shall be open to inspection and shall be subject to being copied by the department or its authorized representative at any reasonable time and as often as may be necessary.

(2) The department and the chairman of any appeal tribunal may require from any employing unit any sworn or unsworn reports with respect to persons employed by it which the department considers necessary to the effective administration of this chapter.

(3) Information thus obtained or obtained from any individual under this chapter shall, except to the individual claimant to the extent necessary for the proper presentation of a claim, be held confidential and shall not be published or be open to public inspection, except to public employees in the performance of their public duties, in any manner revealing the individual's or employing unit's identity, but any claimant or his legal representative at a hearing before the board or appeal tribunal shall be supplied with information from the records to the extent necessary for the proper presentation of his claim.

(4) Any employee or member of the department who violates any provision of this section shall be fined not less than $20 or more than $200 or imprisoned for not longer than 90 days or both.

History: En. Subd. (e), Sec. 11, Ch. 137, L. 1937; amd. Sec. 1, Ch. 144, L. 1974; amd. Sec. 15, Ch. 368, L. 1975; R.C.M. 1947, 87-124; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

Cross-References

"Board" defined, 39-51-201

"Department" defined, 39-51-201.

"Employing unit" defined, 39-51-201.

Parts 7 through 10 reserved

Part 11

Employer Contributions

39-51-1101. Commencement and termination of coverage under chapter. (1) Any employing unit which is or becomes an employer subject to this chapter within any calendar year shall be subject to this chapter during the whole of such calendar year, except that this subsection shall not apply to an employing unit electing coverage as provided for in 39-51-1102.

(2) Except as otherwise provided in 39-51-1102, an employing unit shall cease to be an employer subject to this chapter only as of January 1 of any calendar year only if it files with the department prior to the last day of February of such year a written application for termination of coverage and the department finds that the total wages payable for employment by said employer in the preceding calendar year did not exceed $500. For the purpose of this subsection, the two or more employing units mentioned in subsection (2) or (3) of 39-51-202 shall be treated as a single employing unit.

History: En. Sec. 8, Ch. 137, L. 1937; amd. Sec. 4, Ch. 137, L. 1939; amd. Sec. 5, Ch. 164, L. 1941; amd. Sec. 1, Ch. 37, L. 1969; amd. Sec. 1, Ch. 103, L. 1971; amd. Sec. 1, Ch. 181, L. 1973; amd. Sec. 2, Ch. 323, L. 1975; R.C.M. 1947, 87-110(a), (b); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout (2).

Cross-References

"Department" defined, 39-51-201.

"Employing unit" defined, 39-51-201.

"Wages" defined, 39-51-201.

39-51-1102. Election by employing units not otherwise subject to chapter. An employing unit not otherwise subject to this chapter or any employing unit for which services are performed that do not constitute employment as defined in this chapter may file with the department a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all purposes of this chapter for not less than 2 calendar years. Upon the written approval of such election by the department, such services shall be deemed to constitute employment subject to this chapter from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to such 2 calendar years only if at least 30 days prior to such January 1 such employing unit has filed with the department a written notice to that effect.

History: En. Sec. 8, Ch. 137, L. 1937; amd. Sec. 4, Ch. 137, L. 1939; amd. Sec. 5, Ch. 164, L. 1941; amd. Sec. 1, Ch. 37, L. 1969; amd. Sec. 1, Ch. 103, L. 1971; amd. Sec. 1, Ch. 181, L. 1973; amd. Sec. 2, Ch. 323, L. 1975; R.C.M. 1947, 87-110(c); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

Cross-References

"Department" defined, 39-51-201.

"Employing unit" defined, 39-51-201.

39-51-1103. Contributions by employers required — payments in lieu thereof authorized for certain employers. (1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this chapter with respect to wages, as defined in 39-51-201, paid for employment, as defined in this chapter, occurring during such calendar year.

(2) Such contributions shall become due and be paid by each employer to the department for the fund in accordance with such regulations as the department may prescribe and shall not be deducted in whole or in part from the wages of individuals in his employ.

(3) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

(4) Nonprofit organizations defined in section 501(c)(3) of the federal Internal Revenue Code and which are exempt from tax under section 501(a) of such code may elect to make payments in lieu of contributions.

(5) The state and its political subdivisions, effective January 1, 1977, may elect to make payments in lieu of contributions or pay under a special contributions plan established for governmental entities only.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(part); amd. Sec. 18, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 9, Ch. 125, L. 1985.

Compiler's Comments

1985 Amendment: In (1) deleted "(19)" after "39-51-201".

1981 Amendment: Substituted "department" for "division" throughout (2).

Cross-References

"Contributions" defined, 39-51-201.

"Department" defined, 39-51-201.

"Fund" defined, 39-51-201.

"Wages" defined, 39-51-201.

39-51-1104. Duty and liability of contractor and subcontractor respectively in regard to contributions owed by subcontractor. (1) Any contractor who is or becomes an employer under the provisions of this chapter who contracts with any subcontractor who also is or becomes an employer under the provisions of this chapter shall withhold sufficient money on the contract to guarantee that all contributions, penalties, and interest are paid upon completion of the contract.

(2) It shall be the duty of any subcontractor who is or becomes an employer under the provisions of this chapter to furnish the contractor with a certification issued by the department, prior to final payment for the particular job, stating that said subcontractor is current and in full compliance with the provisions of this chapter.

(3) Failure to comply with the provisions of this section shall render the contractor directly liable for all contributions, penalties, and interest due from the subcontractor on the particular job, and the administrator has all of the remedies of collection against the contractor under the provisions of this chapter as though the services in question were performed directly for the contractor.

History: En. Subd. (b), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 1, Ch. 36, L. 1969; amd. Sec. 1, Ch. 105, L. 1975; amd. Sec. 25, Ch. 368, L. 1975; amd. Sec. 1, Ch. 386, L. 1977; R.C.M. 1947, 87-136(3); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" in (2).

Cross-References

"Administrator" defined, 39-51-201.
"Contributions" defined, 39-51-201.
"Department" defined, 39-51-201.

39-51-1105. Liability of corporate officers for contributions owed by corporation. When a corporation subject to Montana corporate law has failed to file the annual corporation report with the Montana secretary of state as required by law the department shall hold the president, vice-president, secretary, and treasurer jointly and severally liable for any contributions due for the period in which the corporation is delinquent in filing the annual corporation report. If the required annual corporation report is made and filed after the time specified, such officers may not, on account of prior failure to make report, be held liable for the contributions thereafter accruing.

History: En. Subd. (b), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 1, Ch. 36, L. 1969; amd. Sec. 1, Ch. 105, L. 1975; amd. Sec. 25, Ch. 368, L. 1975; amd. Sec. 1, Ch. 386, L. 1977; R.C.M. 1947, 87-136(4); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" in the first sentence.

Cross-References

"Contributions" defined, 39-51-201.
"Department" defined, 39-51-201.

39-51-1106. Repealed. Sec. 21, Ch. 685, L. 1979.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(part); amd. Sec. 2, Ch. 57, L. 1979.

39-51-1107. Repealed. Sec. 21, Ch. 685, L. 1979.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269,

L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(b)(3).

39-51-1108. Amount of wages per employee subject to contribution. (1) Payment of contributions shall apply only to wages paid up to and including the amount specified in this section by an employer to an employee with respect to employment.

(2) The taxable wage base for each year is the greater of 80% of the average annual wage as determined under 39-51-2201 (rounded to the nearest $100) during the calendar year immediately preceding the most recently completed calendar year, or the amount of taxable wage base specified in the Federal Unemployment Tax Act.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(d); amd. Sec. 8, Ch. 685, L. 1979; amd. Sec. 2, Ch. 371, L. 1985.

Compiler's Comments

1985 Amendment: In (1) after "including", substituted "the amount specified in this section" for "$4,200" and at end of subsection after "employment", deleted "during the calendar years 1972, 1973, 1974, and the first calendar quarter of year 1975"; deleted former (2) and (3) and part of former (4) (now (2)) that read: "(2) For the second calendar quarter of the calendar year 1975 through the fourth calendar quarter of 1977, the taxable wage base for each year is $4,800.

(3) Effective January 1, 1978, and thereafter the taxable wage base for each year is $6,000.

(4) For the first calendar quarter of 1979 and thereafter, the"; in present (2) substituted "80% of the average annual wage" for "75% of the average annual wage", substituted "39-51-2201" for "39-51-2201(2)", and after "$100" deleted "not to exceed an increase of $200 over the taxable wage base of the preceding year"; and deleted former (5) that read: "Notwithstanding subsection (4) the taxable wage base for 1979 shall be $7,400."

Applicability: Section 11, Ch. 371, L. 1985, was an applicability section that read: "Sections 1 through 5 apply retroactively, within the meaning of 1-2-109, to January 1, 1985."

Cross-References

"Calendar quarter" defined, 39-51-201.
"Contributions" defined, 39-51-201.
"Wages" defined, 39-51-201.

39-51-1109. Tax appeals. Any person aggrieved by any decision, determination, or redetermination of the department involving contribution liability, contribution rate, application for refund, or the charging of benefit payments to employers making payment in lieu of contributions is entitled to a review in accordance with Title 2, chapter 4, parts 6 and 7.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(e); amd. Sec. 44, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 10, Ch. 125, L. 1985.

Compiler's Comments

1985 Amendment: At end after "review", substituted "in accordance with Title 2, chapter 4, parts 6 and 7" for "by the department or its authorized representative, hereinafter referred to as a deputy. The decision of the deputy is considered the decision of the department. The department or the deputy conducting the review may refer the matter to an appeals referee, may decide the application for review on the basis of such facts and information as may be obtained, or may hear argument to secure further facts. After such review, notice of the decision must be given to the employing unit. Such decision made pursuant to such review is considered the final decision of the department unless the employing unit or any other such interested party, within 5 calendar days after delivery of such notification or within 7 calendar days after such notification was mailed to his last-known address, files an appeal from this decision. Such appeal will be referred to an appeals referee who shall make his decisions with respect thereto in accordance with the procedure prescribed in 39-51-2403."

1981 Amendment: Substituted "department" for "division" throughout the section.

Cross-References

"Department" defined, 39-51-201.

39-51-1110. Refunds to employers. (1) If not later than 3 years after the date on which any contributions or interest thereon became due or not later than 1 year from the date on which payment was made, whichever is later, an employer who has paid such contributions or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments or for a refund thereof because such adjustment cannot be made and the department shall determine that such contributions or interest or any portion thereof was erroneously collected, the department shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him or, if such adjustment cannot be made, the department shall refund said amount, without interest, from the fund. For like cause and within the same period, adjustment or refund may be so made on the department's own initiative.

(2) If the department shall determine that an employer has paid contributions to this state under this chapter when such contributions should have been paid to another state under a similar act of such other state, transfer of such contributions to such other state shall be made upon discovery or, upon proof of payment that such other state has been fully paid, then refund to such employer shall be made at any time upon application without limitation of time.

(3) In the event that this chapter is not certified by the secretary of labor under section 1603 of the Internal Revenue Code, as amended, 1939, for any year, then and in that event refunds shall be made of all contributions required under this chapter from employers for that year.

History: En. Subd. (d), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 3, Ch. 233, L. 1943; amd. Sec. 6, Ch. 164, L. 1955; amd. Sec. 10, Ch. 171, L. 1957; amd. Sec. 26, Ch. 368, L. 1975; R.C.M. 1947, 87-138; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

Cross-References

"Contributions" defined, 39-51-201.
"Department" defined, 39-51-201.
"Fund" defined, 39-51-201.
"State" defined, 39-51-201.

39-51-1111 through 39-51-1120 reserved.

39-51-1121. Definitions. As used in this part and part 12, the following definitions apply:

(1) "Computation date" means the reporting period ending September 30 preceding the calendar year for which a covered employer's contribution rate is effective.

(2) "Cutoff date" means December 31 immediately following the computation date. The department may extend the cutoff date in meritorious cases.

(3) "Deficit employer" means a covered employer who has established a record of accumulated benefits charged to his account in excess of his accumulated contributions paid as of the cutoff date and has a minus experience factor.

(4) "Department" means the department of labor and industry.

(5) "Eligible employer" means a covered employer who has:

(a) paid contributions during each of the 3 fiscal years immediately preceding the computation date;

(b) with respect to such 3 fiscal years, filed all contribution reports prescribed by the department;

(c) paid all contributions due with respect to the 3 fiscal years before the cutoff date of the rate year;

(d) established a record of accumulated contributions in excess of benefits charged to his account; and

(e) achieved a plus experience factor.

(6) "Fiscal year" means the four consecutive calendar quarters ending on September 30.

(7) "Governmental entities" means the state or any political subdivision of the state or an instrumentality of the state or a political subdivision, including any employing unit funded directly by tax levies.

(8) "Unrated employer" means a covered employer who has not paid contributions in each of the 3 fiscal years immediately preceding the computation date or an employer who has established a record of accumulated contributions in excess of benefits charged to his account but has not filed all required payroll reports or paid contributions by the cutoff date for any of the quarters in the 3 fiscal years immediately preceding the computation date.

History: En. Secs. 1, 2, Ch. 685, L. 1979; amd. Sec. 1, Ch. 3, L. 1981; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendments:

Chapter 3 substituted "the reporting period ending September 30" for "June 30" in (1), "December 31" for "September 30" in (2), and "September 30" for "June 30" in (6).

Chapter 349 substituted "department" for "division" in (2) and (5)(b); substituted the definition of "department of labor and industry" for "employment security division" in (4).

Cross-References

"Benefits" defined, 39-51-201.
"Contributions" defined, 39-51-201.
"Employing unit" defined, 39-51-201.
"State" defined, 39-51-201.

39-51-1122. Treatment of minor irregularities in determination of eligible employer status. For the purpose of determining if a covered employer is an eligible employer, delinquencies of a minor nature may be disregarded if it is shown to the satisfaction of the department that the covered employer acted in good faith and that forfeiture of a reduced contribution rate because of such minor delinquency would be inequitable.

History: En. Sec. 3, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division".

Cross-References

"Department" defined, 39-51-201, 39-51-1121.

39-51-1123. Rates of contributions. All covered employers, except governmental entities and those qualified and electing to make payments in lieu of contributions, shall pay contributions at rates assigned annually by the department.

History: En. Sec. 4, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division".

Cross-References

"Contributions" defined, 39-51-201.
"Department" defined, 39-51-201, 39-51-1121.

39-51-1124. Procedure for election to make payments in lieu of contributions. (1) Any nonprofit organization defined in 39-51-1103 or governmental entity electing to become liable for payments in lieu of contributions must file a written notice of its election with the department not later than 30 days immediately following the date of the determination of subjectivity to this chapter. This election shall be for a period of not less than 2 years.

(2) Any nonprofit organization defined in 39-51-1103 or governmental entity which has been paying contributions for at least 2 taxable years may change to payments in lieu of contributions by filing a written notice to that effect with the department within 30 days before the beginning of the taxable year for which the change is effective.

History: En. Sec. 5, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

Cross-References

"Contributions" defined, 39-51-201.

"Department" defined, 39-51-201, 39-51-1121.

39-51-1125. Computation of payments in lieu of contributions. (1) Qualified employers electing to make payments in lieu of contributions shall pay into the fund an amount equivalent to the full amount of regular benefits plus one-half of the amount of extended benefits paid to individuals based on wages paid by the employing unit. After December 31, 1978, governmental entities shall pay the full amount of extended benefits.

(2) If benefits paid an individual are based on wages paid by both the employer and one or more other employers, the amount payable by any one employer to the fund bears the same ratio to total benefits paid to the individual as the base period wages paid to the individual by such employer bear to the total amount of base period wages paid to the individual by all his base period employers.

(3) If the base period wages of an individual include wages from more than one such employer, the amount to be paid into the fund with respect to the benefits paid to the individual shall be prorated among the liable employers in proportion to the wages paid to the individual by each such employer during the base period.

(4) The amount of payment required from employers shall be ascertained by the department monthly and becomes due and payable by the employer quarterly as directed in this chapter. Penalty and interest for delinquency shall be assessed such employers as specified in 39-51-1301.

(5) A nonprofit organization which elects to make payments in lieu of contributions into the unemployment insurance fund is not liable to make such payments with respect to the benefits paid to any individual whose base period wages include wages for previously uncovered services, as defined in 39-51-204(3)(c), to the extent that the unemployment insurance fund is reimbursed for such benefits pursuant to section 121 of Public Law 94-566.

History: En. Sec. 6, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" in (4).

Cross-References

"Base period" defined, 39-51-201.

"Benefits" defined, 39-51-201.

"Contributions" defined, 39-51-201.

"Department" defined, 39-51-201, 39-51-1121.

"Employing unit" defined, 39-51-201.

"Fund" defined, 39-51-201.

"Wages" defined, 39-51-201.

39-51-1126. Termination of election to make payments in lieu of contributions. (1) Any nonprofit organization or governmental entity may terminate its election to make payments in lieu of contributions after 2 years from the effective date of such election by filing a written notice with the department not later than 30 days prior to the beginning of the taxable year for which the termination is effective.

(2) If a nonprofit organization or governmental entity is delinquent in making payments in lieu of contributions, the department may terminate the election to make payments in lieu of contributions as of the beginning of the next taxable year, and the termination is effective for that and the next taxable year.

History: En. Sec. 7, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

Cross-References

"Contributions" defined, 39-51-201.

"Department" defined, 39-51-201, 39-51-1121.

39-51-1127 through 39-51-1130 reserved.

39-51-1131. *(Temporary)* **Surtax to pay federal advances.** The department shall for each calendar year determine the rate of a surtax to be charged during that year to all employers. The rate of the surtax must be based on federal advances that will or have become due in that calendar year. The surtax applies to each employer's total wages paid during that calendar year. The surtax rate for any calendar year may not be more than 0.3% of total wages paid during that calendar year. The surtax must be paid in the same manner as regular contributions. *(Terminates July 1, 1987—sec. 12, Ch. 371, L. 1985.)*

History: En. Sec. 1, Ch. 371, L. 1985.

Compiler's Comments

Applicability: Section 11, Ch. 371, L. 1985, was an applicability section that read: "Sections 1 through 5 apply retroactively, within the meaning of 1-2-109, to January 1, 1985."

Part 12

Employer Classification and Experience Rating

39-51-1201 through 39-51-1205. Repealed. Sec. 21, Ch. 685, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

39-51-1201 through 39-51-1205. En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109.

39-51-1206. Department to provide for notification of employers of their classification and contribution rate. The department shall by regulation provide for the proper notification of employers of the classification and rate of contribution applicable to their accounts. Such notification shall be final for all purposes unless and until such employer files a written request with the department for a redetermination or hearing thereon within 30 days after receipt of such notice.

History: **En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(part); amd. Sec. 1, Ch. 349, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

Cross-References

"Department" defined, 39-51-201, 39-51-1121.

39-51-1207 through 39-51-1210 reserved.

39-51-1211. Definitions. The definitions set forth in 39-51-1121 apply to this part.

History: **En. 39-51-1211 by Code Commissioner, 1979.**

39-51-1212. Experience rating for governmental entities. (1) Governmental entities newly covered under this chapter after December 31, 1974, shall make payments for the period prior to July 1, 1977, equal to 0.4% of total wages paid employees for services in employment during the calendar quarter and for the period after July 1, 1977, shall make payments at the median rate.

(2) The rates of governmental entities who have accumulated experience rating credits shall be adjusted annually as follows with each governmental entity assigned a rate based upon:

(a) its benefit cost experience, to be arrived at by dividing the total sum of benefits charged to the employer's account for all past periods which are completed transactions by December 31 by total wages from date of subjectivity of the employing unit through December 31; and

(b) the benefit cost for all past years of governmental entities electing to pay contributions compared with total payrolls reported for all past years by these governmental entities used as a median, with the rates so fixed using the median that the rates will, when applied to the total annual payroll for subject governmental entities, yield total paid contributions equaling approximately the total benefit costs.

(3) New governmental entities electing to pay contributions shall be assigned the median rate for the year in which they become subject.

(4) At no time may the minimum rate be less than 0.1% or the maximum rate be greater than 1.5%. The rates are to be graduated at one-tenth intervals.

(5) In the event benefit charges exceed contributions paid in the last 2 completed fiscal years, governmental entities' rates will be adjusted by increasing all rates to the next higher schedule.

(6) The computed rate is effective July 1 of each year.

History: **En. Sec. 9, Ch. 685, L. 1979.**

Cross-References

"Annual payroll" defined, 39-51-201.
"Benefits" defined, 39-51-201.
"Calendar quarter" defined, 39-51-201.
"Contributions" defined, 39-51-201.
"Employing unit" defined, 39-51-201.
"Wages" defined, 39-51-201.

39-51-1213. Classification of employers for experience rating purposes. (1) The department shall for each calendar year classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts, with contribution rates reflecting benefit experience. Each employer's rate for a calendar year shall be determined on the basis of his record as of October 1 of the preceding calendar year.

(2) In making the classification, each eligible and deficit employer's contribution rate is determined in the manner set forth below:

(a) Each employer is given an "experience factor" which is contributions paid since October 1, 1981, minus benefits charged on each employer's account since October 1, 1981, divided by his average annual taxable payroll rounded to the next lower dollar amount for the 3 fiscal years immediately preceding the computation date. The computation of the "experience factor" shall be to six decimal places.

(b) Schedules shall be prepared listing all eligible and deficit employers in inverse numerical order of their experience factors. There shall be listed on such schedules for each employer in addition to the experience factor:

(i) the amount of his taxable payroll for the fiscal year ending on the computation date; and

(ii) the cumulative total consisting of the sum of the employer's taxable payroll for the fiscal year ending on the computation date and the corresponding taxable payrolls for all other employers preceding him on the schedules.

(3) The cumulative taxable payroll amounts listed on the schedules provided for in 39-51-1218 shall be segregated into groups that will yield approximately the average tax rate according to the tax schedule assigned for that particular taxable year. Each group shall be identified by the rate class number listed in the table which represents the percentage limits of each group. Each employer on the schedules is assigned that contribution rate opposite his rate class for the tax schedule in effect for the taxable year.

(4) (a) If the grouping of rate classes requires the inclusion of exactly one-half of an employer's taxable payroll, the employer is assigned the lower of the two rates designated for the two classes in which the halves of his taxable payroll are so required.

(b) If the group of rate classes requires the inclusion of a portion other than exactly one-half of an employer's taxable payroll, the employer is assigned the rate designated for the class in which the greater part of his taxable payroll is so required.

(c) If one or more employers on the schedules have experience factors identical to that of the last employer included in a particular rate class, all such employers are included in and assigned the contribution rate specified for such class, notwithstanding the provisions of 39-51-1214.

(5) If the taxable payroll amount or the experience factor or both such taxable payroll amount and experience factor of any eligible or deficit employer listed on the schedules is changed, the employer is placed in that position on the schedules which he would have occupied had his taxable payroll amount or experience factor as changed been used in determining his position in the first instance, but such change does not affect the position or

rate classification of any other employer listed on the schedules and does not affect the rate determination for previous years.

History: En. Sec. 10, Ch. 685, L. 1979; amd. Sec. 2, Ch. 3, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 168, Ch. 575, L. 1981; amd. Sec. 3, Ch. 371, L. 1985.

Compiler's Comments

1985 Amendment: At end of introductory language in (2) after "below", deleted "for the calendar year 1980 and for each calendar year thereafter"; and in (2)(a) after "contributions paid", inserted "since October 1, 1981", after "employer's account" substituted "since October 1, 1981" for "for the most recent 3 fiscal years immediately preceding the computation date", and at end of first sentence substituted "the 3 fiscal years immediately preceding the computation date" for "the same 3 fiscal years".

Applicability: Section 11, Ch. 371, L. 1985, was an applicability section that read: "Sections 1 through 5 apply retroactively, within the meaning of 1-2-109, to January 1, 1985."

1981 Amendments: Chapter 3 substituted "October 1" for "July 1" in (1); substituted "for the most recent 3 fiscal years immediately preceding the computation date" for "since July 1, 1976" and substituted "same 3 fiscal years" for "3 fiscal years immediately preceding the computation date" in (2)(a).

Chapter 349 substituted "department" for "division" in (1).

Chapter 575 substituted "39-51-1214" for "39-51-1213" at the end of (4)(c).

Cross-References

"Annual payroll" defined, 39-51-201.
"Annual total payroll" defined, 39-51-201.
"Benefits" defined, 39-51-201.
"Contributions" defined, 39-51-201.
"Department" defined, 39-51-201, 39-51-1121.

39-51-1214. Benefit payments chargeable to employer experience rating accounts. Benefits paid shall be charged to the account of the covered employer, except cost reimbursement and governmental employers, who paid the largest individual amount of base period wages as shown on the determination used as the basis for the payment of such benefits. No charge shall be made to the account of such covered employer with respect to benefits paid under the following situations:

(1) if paid to a worker who terminated his services voluntarily without good cause attributable to such covered employer or who had been discharged for misconduct in connection with such services;

(2) if paid in accordance with the extended benefit program triggered by either national or state indicators.

History: En. Sec. 11, Ch. 685, L. 1979; amd. Sec. 3, Ch. 3, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "prior to June 30, with respect to benefit years commencing with July 1, 1976, and thereafter . . . as of June 30 of each year preceding the calendar year for which a covered employer's contribution rate is effective" in the first paragraph.

Cross-References

"Base period" defined, 39-51-201.
"Benefits" defined, 39-51-201.
"State" defined, 39-51-201.
"Wages" defined, 39-51-201.

39-51-1215. Maintenance of experience rating records. An experience rating record shall be maintained for each covered employer. The record is credited with all contributions which the covered employer has paid since October 1, 1981. The record is also charged with the amount of benefits paid which are chargeable to the covered employer's account since October 1, 1981. Nothing in this section grants any covered employer or individual in his service a priority with respect to any claim or right because of amounts paid by the covered employer into the employment security fund.

History: En. Sec. 12, Ch. 685, L. 1979; amd. Sec. 4, Ch. 3, L. 1981; amd. Sec. 4, Ch. 371, L. 1985.

Compiler's Comments

1985 Amendment: At end of second sentence after "paid", substituted "since October 1, 1981" for "for the most recent 3 fiscal years immediately preceding the computation date, prior to the cutoff date", and at end of third sentence, after "account", substituted "since October 1, 1981" for "for the most recent 3 fiscal years ending September 30".

Applicability: Section 11, Ch. 371, L. 1985, was an applicability section that read: "Sections 1 through 5 apply retroactively, within the meaning of 1-2-109, to January 1, 1985."

1981 Amendment: Substituted "for the most recent 3 fiscal years immediately preceding the computation date" for "for covered employment" in the second sentence and added "for the most recent 3 fiscal years ending September 30" in the third sentence.

Cross-References

"Benefits" defined, 39-51-201.

"Contributions" defined, 39-51-201.

"Fund" defined, 39-51-201.

39-51-1216. Experience rating record voided when account inactive. Whenever an employer whose coverage has been terminated because he has ceased to do business or because he has not covered employment for a period of 3 years becomes a covered employer, he is considered a new employer and he is not to be credited with his previous experience for the purpose of computing any future "experience factor".

History: En. Sec. 13, Ch. 685, L. 1979.

39-51-1217. Schedule of rates assigned based on trust fund reserve. (1) The rate schedule for each calendar year is assigned based upon the ratio of the trust fund balance as of December 31 prior to the rate year to total wages in covered employment for the 12-month period prior to the computation date.

(2) The ratio at the top of each tax schedule in the tax table shown in 39-51-1218 represents the minimum fund level required for a specific tax schedule to be in effect.

(3) Employer rates are assigned in accord with the rates provided in each schedule for eligible, unrated, and deficit employers, based upon their experience as defined in this section.

History: En. Sec. 14, Ch. 685, L. 1979; amd. Sec. 5, Ch. 3, L. 1981.

Compiler's Comments

1981 Amendment: In (1), deleted a clause requiring an employer rate increase whenever a recomputed trust fund balance ratio increased.

Cross-References

"Fund" defined, 39-51-201.

"Wages" defined, 39-51-201.

39-51-1218. Rate schedules.

SCHEDULES OF CONTRIBUTION RATES — Part I

	Sched. I	Sched. II	Sched. III	Sched. IV
Minimum Ratio of Fund to Total Wages	(.0260)	(.0245)	(.0225)	(.0200)
Average Tax Rate	1.4	1.6	1.8	2.0

Rate Class	Contribution Rates For Eligible Employers			
1	0.0%	0.1%	0.3%	0.5%
2	0.1	0.3	0.5	0.7
3	0.3	0.5	0.7	0.9
4	0.5	0.7	0.9	1.1
5	0.7	0.9	1.1	1.3
6	0.9	1.1	1.3	1.5
7	1.1	1.3	1.5	1.7
8	1.3	1.5	1.7	1.9
9	1.5	1.7	1.9	2.1
10	1.7	1.9	2.1	2.3
	Contribution Rates For Unrated Employers			
	2.0%	2.2%	2.4%	2.6%

Rate Class	Contribution Rates For Deficit Employers			
1	3.2%	3.4%	3.6%	3.8%
2	3.4	3.6	3.8	4.0
3	3.6	3.8	4.0	4.2
4	3.8	4.0	4.2	4.4
5	4.0	4.2	4.4	4.6
6	4.2	4.4	4.6	4.8
7	4.4	4.6	4.8	5.0
8	4.6	4.8	5.0	5.2
9	4.8	5.0	5.2	5.4
10	6.4	6.4	6.4	6.4

SCHEDULES OF CONTRIBUTION RATES — Part II

Sched. V (.0170) 2.2	Sched. VI (.0135) 2.4	Sched. VII (.0095) 2.6	Sched. VIII (.0075) 2.8	Sched. IX (.0050) 3.0	Sched. X (.....) 3.2
Contribution Rates For Eligible Employers					
0.7%	0.9%	1.1%	1.3%	1.5%	1.7%
0.9	1.1	1.3	1.5	1.7	1.9
1.1	1.3	1.5	1.7	1.9	2.1
1.3	1.5	1.7	1.9	2.1	2.3
1.5	1.7	1.9	2.1	2.3	2.5
1.7	1.9	2.1	2.3	2.5	2.7
1.9	2.1	2.3	2.5	2.7	2.9
2.1	2.3	2.5	2.7	2.9	3.1
2.3	2.5	2.7	2.9	3.1	3.3
2.5	2.7	2.9	3.1	3.3	3.5
Contribution Rates For Unrated Employers					
2.8%	3.0%	3.2%	3.4%	3.6%	3.8%
Contribution Rates For Deficit Employers					
4.0%	4.2%	4.4%	4.6%	4.8%	5.0%
4.2	4.4	4.6	4.8	5.0	5.2
4.4	4.6	4.8	5.0	5.2	5.4
4.6	4.8	5.0	5.2	5.4	5.6
4.8	5.0	5.2	5.4	5.6	5.8
5.0	5.2	5.4	5.6	5.8	6.0
5.2	5.4	5.6	5.8	6.0	6.2
5.4	5.6	5.8	6.0	6.2	6.4
5.6	5.8	6.0	6.2	6.4	6.4
6.4	6.4	6.4	6.4	6.4	6.4

History: En. Sec. 15, Ch. 685, L. 1979; amd. Sec. 5, Ch. 371, L. 1985.

Compiler's Comments

1985 Amendment: Substituted present schedules for former schedules. For former text see Sec. 15, Ch. 685, L. 1979.

Applicability: Section 11, Ch. 371, L. 1985, was an applicability section that read: "Sections 1 through 5 apply retroactively, within the meaning of 1-2-109, to January 1, 1985."

Cross-References

"Fund" defined, 39-51-201.

"Wages" defined, 39-51-201.

39-51-1219. Procedures for the substitution, merger, or acquisition of an employer account by a successor employing unit. (1) Subject to the provisions of subsection (3), whenever any individual or organization (whether or not a covered employer) in any manner succeeds to or acquires all or substantially all of the business of an employer who at the time of acquisition was a covered employer and whenever in respect to whom the department finds that the business of the predecessor is continued solely by the successor:

(a) the separate account and the actual contribution, benefit, and taxable payroll experience of the predecessor shall, upon the joint application of the predecessor and the successor within 90 days after such acquisition and approval by the department, be transferred to the successor employer for the purpose of determining the successor's liability and rate of contribution; and

(b) any successor who was not an employer on the date of acquisition becomes a covered employer as of such date.

(2) Whenever any individual or organization (whether or not a covered employer) in any manner succeeds to or acquires part of the business of an employer who at the time of acquisition was a covered employer and whenever such portion of the business is continued by the successor:

(a) so much of the separate account and the actual contribution, benefit, and taxable payroll experience of the predecessor as is attributable to the portion of the business transferred, as determined on a pro rata basis in the same ratio that the wages of covered employees properly allocable to the transferred portion of the business bears to the payroll of the predecessor in the last four completed calendar quarters immediately preceding the date of transfer, shall, upon the joint application of the predecessor and the successor within 90 days after such acquisition and approval by the department, be transferred to the successor employer for the purpose of determining the successor's liability and rate of contribution; and

(b) any successor who was not an employer on the date of acquisition becomes a covered employer as of such date.

(3) (a) The 90-day period may be extended at the discretion of the department.

(b) Whenever a predecessor covered employer has a deficit experience rating account as of the last computation date, the transfer provided for in subsections (1) and (2) is mandatory except when it is shown by substantial evidence that the management or ownership or both the management and ownership are not substantially the same for the successor as for the predecessor, in which case the successor shall begin with the rate of a new employer. Whenever such mandatory transfer involves only a portion of the experience rating record and the predecessor or successor employers fail to supply the required payroll information within 10 days after notice, the transfer shall be based on estimates of the applicable payrolls.

(4) (a) If the successor was a covered employer prior to the date of the acquisition of all or a part of the predecessor's business, his rate of contribution, effective the first day of the calendar year immediately following the date of acquisition, is based on the combined experience of the predecessor and successor.

(b) If the successor was not a covered employer prior to the date of the acquisition of all or a part of the predecessor's business, his rate is the rate applicable to the predecessor with respect to the period immediately preceding the date of acquisition, but if there was more than one predecessor, the successor's rate shall be a newly computed rate based on the combined experience of the predecessors, becoming effective immediately after the date of acquisition and remaining in effect for the balance of the rate year.

History: En. Sec. 16, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

Cross-References

"Benefit" defined, 39-51-201.
"Department" defined, 39-51-201, 39-51-1121.
"Employing unit" defined, 39-51-201.
"Wages" defined, 39-51-201.

Part 13

Unpaid Contributions

39-51-1301. Penalty and interest on past-due contributions. (1) Contributions unpaid on the date on which they are due and payable, as provided by subsections (1) and (2) of 39-51-1103 and 39-51-1125, that are paid within 20 days after the due date shall be subject to a penalty assessment of $10 or 10% of the contribution due, whichever is greater. If the contributions are not paid within 20 days after the due date, the employer shall be subject to a penalty assessment of $15 or 15% of the contributions due, whichever is greater. All past-due contributions shall bear interest at the rate of 18% a year, to be prorated on a daily basis.

(2) A penalty of $40 shall be assessed whenever, as the result of a willful refusal of an employer to furnish wage information or pay contributions on time, the department issues a subpoena to obtain wage information or makes a summary or jeopardy assessment pursuant to 39-51-1302.

(3) Interest and penalties collected pursuant to this section shall be paid into the unemployment insurance trust fund.

(4) When failure to pay contributions on time was not caused by willful intent of the employer, the department may abate the penalty and interest.

(5) All money accruing to the unemployment insurance trust fund from interest and penalties collected on past-due contributions must be used solely for the payment of unemployment insurance benefits and may not be used for any other purpose.

History: En. Subd. (a), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 3, Ch. 233, L. 1943; amd. Sec. 5, Ch. 190, L. 1945; amd. Sec. 24, Ch. 368, L. 1975; amd. Sec. 1, Ch. 197, L. 1977; R.C.M. 1947, 87-135; amd. Sec. 1, Ch. 47, L. 1979; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 19, Ch. 685, L. 1979; amd. Sec. 1, Ch. 2, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 2, Ch. 369, L. 1983; amd. Sec. 1, Ch. 555, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 369 inserted (5).

Chapter 555 substituted (1) for "Contributions unpaid on the date on which they are due and payable, as provided by subsections (1) and (2) of 39-51-1103 and 39-51-1125, shall be subject to a penalty assessment of $10 or 10% of the contribution due, whichever is greater, and shall bear interest at the rate of 1% per month."; and inserted (2).

1981 Amendments: Chapter 2 deleted the first sentence in (1) which assessed a $10 penalty for late filing of unemployment contribution reports; made other changes in phraseology in (3) (now (4)).

Chapter 349 substituted "department" for "division" in (3) (now (4)).

Cross-References

"Contributions" defined, 39-51-201.
"Department" defined, 39-51-201.
"Fund" defined, 39-51-201.

39-51-1302. Summary or jeopardy assessment of unpaid contributions. (1) If any employer fails to file a report or return as required under this chapter or the regulations of the department adopted thereunder within the time specified, the department may make a summary or jeopardy assessment of the amount due by making up such report and determining the amount of contributions due and owing to the fund upon the basis of such information as the department may be able to obtain, and thereupon the same shall be collected the same as other reports and contributions due, with penalty and interest as provided in this chapter.

(2) Upon making such summary or jeopardy assessment, the department shall immediately notify the employer in writing by personal service or by certified or registered mail in the usual course at the last known principal place of business operated by the employer. Such assessment shall be final unless the employer shall protest such assessment in writing within 15 days after service of the notice or, within the same period of time, the employer shall file a correct, signed, and sworn report and statement as provided by the chapter and the regulations of the department.

(3) Upon written protest being filed as above set forth, a day certain for the hearing thereof shall be fixed by the department and notice thereof mailed to the employer. At such hearing, the facts ascertained by the department shall be conclusive and the department may upon the basis of such facts ascertained assess the amount due, modify, set aside, or revise the prior assessment and require the employer to pay the amount due with penalty and interest as provided for in this chapter. A copy of the decision of the department and the assessment of the amount due shall be mailed to the employer at his last known principal place of business and thereupon become final.

History: **En. as Subd. (f) of Sec. 14, Ch. 137, L. 1937 by Sec. 3, Ch. 233, L. 1943; amd. Sec 28, Ch. 368, L. 1975; R.C.M. 1947, 87-140; amd. Sec. 1, Ch. 349, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

Cross-References

"Contributions" defined, 39-51-201.

"Department" defined, 39-51-201.

"Fund" defined, 39-51-201.

39-51-1303. Collection of unpaid contributions by civil action. (1 If, after due notice, any employer defaults in any payment of contributions or interest thereon, the department may in its discretion initiate a civil action in the name of the Montana department of labor and industry to collect the amount due, and the employer adjudged in default shall pay the costs of such action.

(2) An action for the collection of contributions due must be brough within 5 years after the due date of such contributions or it is barred.

(3) The department may pursue its remedy under either this section or 39-51-1304, or both.

History: **En. Subd. (b), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec 8, Ch. 164, L. 1941; amd. Sec. 1, Ch. 36, L. 1969; amd. Sec. 1, Ch. 105, L. 1975; amd. Sec. 25 Ch. 368, L. 1975; amd. Sec. 1, Ch. 386, L. 1977; R.C.M. 1947, 87-136(1); amd. Sec. 46, Ch. 397 L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 111, L. 1983; amd. Sec. 1, Ch. 514 L. 1985.**

Compiler's Comments

1985 Amendment: Deleted former (2) that read: "Civil actions brought under this section to collect contributions or interest thereon from an employer must be heard by the court at the earliest possible date and are entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this chapter and cases arising under the workers' compensation law of this state"; and inserted (3).

1983 Amendment: In (1), after "interes thereon," substituted "the department may i its discretion initiate a" for "the amount du must be collected by"; following "labor an industry" inserted "to collect the amount due".

1981 Amendment: Deleted "division" befor "Montana department of labor and industry" i (1).

Cross-References

"Contributions" defined, 39-51-201.

"Department" defined, 39-51-201.

39-51-1304. Lien for payment of unpaid contributions — lev and execution. Unpaid contributions have the effect of a judgment agains the employer, arising at the time the contributions are due. The department may issue a lien setting forth the amount of contributions due and accrued interest and directing the clerk of the district court of any county of the state to enter the certificate as a judgment in the docket pursuant to 25-9-301. After the due process requirements of 39-51-1109 and 39-51-2403 have been satisfied, the department may enforce the judgment pursuant to Title 25, chapter 13, except that the department may enforce the judgment at any time within 10 years of the creation of the lien.

History: En. as Subd. (e) of Sec. 14, Ch. 137, L. 1937 by Sec. 8, Ch. 164, L. 1941; amd. Sec. 8, Ch. 156, L. 1961; amd. Sec. 27, Ch. 368, L. 1975; R.C.M. 1947, 87-139; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 2, Ch. 514, L. 1985.

Compiler's Comments

1985 Amendment: Substituted present language for "(1) If any contributions payable by an employer under this chapter or any portion thereof is not paid within 25 days after the same becomes due, the department may issue a certificate under its official seal, setting forth the amount of contributions due and interest accrued, directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the employer owing the same, found within his county, for the payment of the amount thereof, with the added penalties, interest, and costs of executing the same and to return such certificates to the department and pay to the department the money collected by virtue thereof by a time to be therein specified, not more than 90 days from the date of the certificate.

(2) The sheriff shall, within 5 days after the receipt of the certificate, file with the clerk of the district court of his county a copy thereof and thereupon the clerk of the district court shall enter in the judgment docket in the column for judgment debtors the name of the employer mentioned in the certificate and in the appropriate columns the amount of contributions due and the penalties for which the certificate is issued and the date when such copy is filed, and thereupon the amount of such certificate so docketed shall become a lien upon the title to and interest in real property or chattels real of the employer against whom it is filed in the same manner as a judgment docketed in the office of such clerk.

(3) The sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgment of a court of record and shall be entitled to the same fees for his services in executing the certificate, to be collected in the same manner."

1981 Amendment: Substituted "department" for "division" throughout (1).

Cross-References

"Contributions" defined, 39-51-201.

"Department" defined, 39-51-201.

39-51-1305. Priority of payment of contributions due under legal dissolutions or distributions. In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims, except taxes and claims for wages of not more than $250 to each claimant earned within 6 months of the commencement of the proceeding.

History: En. Subd. (c), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; R.C.M. 1947, 87-137; amd. Sec. 11, Ch. 125, L. 1985.

Compiler's Comments

1985 Amendment: Deleted former (2) that read: "in the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition under the Federal Bankruptcy Act, contributions then or thereafter due shall be entitled to priority of payment as a debt due the sovereign power as provided by the Bankruptcy Act of June 22, 1938 (Chap. 575-52 Stat. 840)."

Cross-References

"Contributions" defined, 39-51-201.

"Wages" defined, 39-51-201.

39-51-1306. Reciprocity with other states for collection of unpaid contributions. (1) The courts of this state shall recognize and enforce liabilities for unemployment contributions imposed by other states which extend a like comity to this state.

(2) The department is hereby empowered to sue in the courts of any other jurisdiction which extends such comity to collect unemployment contributions and interest due this state. The officials of other states which by statute or otherwise extend a like comity to this state may sue in the courts of this state to collect for such contributions and interest and penalties, if any, due such state. In any such case the administrator may through his attorney or attorneys institute and conduct such suit for such other state.

(3) Venue of such proceedings shall be the same as for actions to collect delinquent contributions, penalties, and interest due under this chapter.

(4) A certificate by the secretary of any such state under the great seal of such state attesting the authority of such official or officials to collect unemployment insurance contributions, penalties, and interest shall be conclusive evidence of such authority.

History: En. Subd. (b), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 1, Ch. 36, L. 1969; amd. Sec. 1, Ch. 105, L. 1975; amd. Sec. 25, Ch. 368, L. 1975; amd. Sec. 1, Ch. 386, L. 1977; R.C.M. 1947, 87-136(2); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" in (2).

Cross-References

"Administrator" defined, 39-51-201.
"Contributions" defined, 39-51-201.
"Department" defined, 39-51-201.
"State" defined, 39-51-201.

Parts 14 through 20 reserved

Part 21

Benefit Eligibility

39-51-2101. Total unemployment — when. An individual shall be deemed totally unemployed in any week during which he performed no work and earned no wages or a week of less than full-time work with wages of less than 2 times his weekly benefit amount. No individual is unemployed in any week that he is self-employed.

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(a)(1).

Cross-References

"Week" defined, 39-51-201.

39-51-2102. Week of unemployment — when deemed to commence. An individual's week of unemployment shall be deemed to commence only after his registration at an unemployment office, except as the department may by regulation otherwise prescribe.

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(a)(2); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division".

Cross-References

"Department" defined, 39-51-201.
"Week" defined, 39-51-201.

39-51-2103. Payment of benefits. (1) Benefits are payable from the fund to any individual who is or becomes unemployed and eligible for benefits as is herein prescribed.

(2) All benefits shall be paid through public employment offices in the state or other agencies designated by the department in accordance with such rules as the department may prescribe.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(part); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout (2).

Cross-References

"Benefits" defined, 39-51-201.

"Department" defined, 39-51-201.

"Fund" defined, 39-51-201.

39-51-2104. General benefit eligibility conditions. An unemployed ndividual is eligible to receive benefits for any week of total unemployment within his benefit year only if the department finds that:

(1) he has filed a claim at and thereafter has continued to report at an employment office in accordance with such regulation as the department may prescribe, except that the department may, by regulation, prescribe that in cases in which it finds such requirements oppressive or inconsistent with the purposes of this chapter, an unemployed individual may file a claim and report for work by mail or through other governmental agencies;

(2) he is able to work and is available for work and is seeking work; provided, however, that no claimant is considered ineligible in any week of unemployment for failure to comply with the provisions of this subsection if such failure is due to an illness or disability which occurs after he has registered for work and no suitable work has been offered to such claimant after the beginning of such illness or disability;

(3) prior to the first week for which he is paid benefits he has been totally unemployed for a waiting period of 1 week. No week is counted as a week of total unemployment for the purposes of this subsection:

(a) if benefits have been paid with respect thereto;

(b) unless the individual was eligible for benefits with respect thereto;

(c) unless it occurs within the benefit year of the claimant;

(d) unless it occurs after benefits first could become payable to any individual under this chapter.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, . 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, . 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, . 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, . 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(a) thru (d); amd. Sec. 47, Ch. 397, . 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 12, Ch. 125, L. 1985; amd. Sec. 6, Ch. 371, . 1985.

ompiler's Comments

1985 Amendments: Chapter 125 at beginning (1) substituted "filed a claim" for "registered r work" and made similar change at end of (1); nd deleted former (2) that read: "he has made claim for benefits in accordance with the ovisions of 39-51-2401". Chapter 371 in (3) in first sentence, substituted "the first week for which he is paid benefits" for "any week for which he claims benefits", and deleted second sentence that read: "However, if claimant's benefit year expires during a period of compensable unemployment, claimant will continue to receive weekly benefits in a new benefit year, if otherwise eligible, without interruption to serve the waiting week for the new benefit year but will thereafter be required to serve the waiting week before receiving benefits during subsequent unemployment in the new benefit year."

1981 Amendment: Substituted "department" for "division" throughout the section.

Cross-References

"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.
"Employment office" defined, 39-51-201.
"Week" defined, 39-51-201.

39-51-2105. Qualifying wages. (1) To qualify as an insured worker an individual must have been paid wages for insured work in the quarters of his base period an amount totaling not less than 1 ½ times his base period high quarter wages.

(2) On and after July 1, 1980, to qualify for benefits, an individual must have had at least 20 weeks of work with an average of $50 per week in subject employment in the base period. To qualify for benefits, the total base period wages must be $1,000 or more.

(3) With respect to weeks of unemployment beginning on or after January 1, 1978, wages for insured work shall include wages paid for previously uncovered services. For the purposes of this subsection, the term "previously uncovered services" means services:

(a) which were not employment as defined in 39-51-204(1)(a) and (1)(b) at any time during the 1-year period ending December 31, 1975; and

(b) which:

(i) are agricultural labor, as defined in 39-51-203(8), or domestic service, as defined in 39-51-203(9); or

(ii) are services performed by an employee of this state or a political subdivision thereof, as provided in 39-51-203(5), or by an employee of a nonprofit educational institution which is not an institution of higher education, as provided in 39-51-203(6), except to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(part); amd. Sec. 1, Ch. 688, L. 1979.

Cross-References

"Base period" defined, 39-51-201.
"Benefits" defined, 39-51-201.
"Institution of higher education" defined, 39-51-201.
"State" defined, 39-51-201.
"Wages" defined, 39-51-201.
"Week" defined, 39-51-201.

39-51-2106. Certain wages not to be used in determining benefit eligibility or amount. Wages earned for services performed as an employee representative as defined in the Railroad Unemployment Insurance Act (52 Stat. 1094) or for services performed for an employer as defined in said act shall not be included for the purposes of determining eligibility or weekly benefit amount under this chapter.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec.

1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(part).

Cross-References

"Wages" defined, 39-51-201.

39-51-2107. Services for remuneration to be performed during benefit year as condition for receiving benefits in second benefit year — amount required. An individual who received benefits during a benefit year must perform services for remuneration after the beginning of that year as a condition for receiving benefits in a second benefit year. The service may be in either covered or noncovered employment. However, the individual must have earned the lesser of three-thirteenths of his high quarter of his second benefit year or 6 times his weekly benefit amount of that same year.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(e).

Cross-References

"Benefits" defined, 39-51-201.

39-51-2108. Payment of benefits based on service in public, charitable, or educational organizations. (1) Benefits based on service in employment defined in subsections (5) and (6) of 39-51-203 and subsections (2) and (3) of 39-51-204 are payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to this chapter, except that benefits based on service in an instructional, research, or principal administrative capacity for an educational institution may not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract if the individual has a contract or reasonable assurance of a contract to perform services in any such capacity for any such educational institution for both such academic years or both such terms.

(2) Benefits based on services in any other capacity for an educational institution shall be denied to any individual for any week which commences during a period between 2 successive academic years or terms if the individual performs such services in the first of such academic years or terms and there is a reasonable assurance that the individual will perform such services in the second of such academic years or terms. If any individual is denied benefits and was not offered an opportunity to perform such service for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of the benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of the denial provided for in this section.

(3) Benefits based on services described in subsections (1) and (2) of this section shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if such

individual performs such services in the period immediately before such vacation period or holiday recess and there is reasonable assurance that such individual will perform such service in the period immediately following such vacation period or holiday recess.

(4) Benefits based on services described in subsections (1) and (2) of this section to an individual who performed such services for an educational institution while in the employ of an educational service agency shall be denied as specified in subsections (1), (2), and (3) of this section. The term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such service to one or more educational institutions.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(f); amd. Sec. 48, Ch. 397, L. 1979; amd. Sec. 1, Ch. 1, L. 1985.

Compiler's Comments

1985 Amendment: Near end of (1) after "if the individual has a contract", inserted "or reasonable assurance of a contract"; and inserted (2) through (4).

Cross-References

"Benefits" defined, 39-51-201.

"Week" defined, 39-51-201.

39-51-2109. Payment of benefits to athletes. Effective January 1, 1978, benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between 2 successive sport seasons or similar periods if such individual performed such services in the first of such seasons or similar periods and there is a reasonable assurance that such individual will perform such services in the later of such seasons or similar periods.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(g).

Cross-References

"Benefits" defined, 39-51-201.

"Week" defined, 39-51-201.

39-51-2110. Payment of benefits to aliens. (1) Effective January 1, 1978, benefits shall not be paid on the basis of services performed by an alien unless such alien is an individual who has been lawfully admitted for permanent residence or otherwise is permanently residing in the United States under color of law, including an alien who is lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act.

(2) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(3) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are

not payable because of his alien status shall be made except upon a preponderance of the evidence.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(h).

Cross-References

"Benefits" defined, 39-51-201.

Part 22

Amount and Duration of Benefits

39-51-2201. Weekly benefit amount — determination of average weekly wage. (1) For claims filed before July 7, 1985, an eligible individual's weekly benefit amount shall be the total base period wages divided by the number of weeks of covered employment times 50%. The weekly benefit amount, if not a multiple of $1, must be rounded to the nearest lower full dollar amount. However, such amount shall not be less than the minimum or more than the maximum weekly benefit amount. For claims effective July 7, 1985, and after, an individual's weekly benefit amount shall be the total base period wages divided by the number of weeks of covered employment times 49%. The weekly benefit amount, if not a multiple of $1, must be rounded to the nearest lower full dollar amount. However, such amount shall not be less than the minimum or more than the maximum weekly benefit amount.

(2) On or before May 31 of each year, the total wages paid by all employers as reported on contribution reports submitted on or before such date for the preceding calendar year shall be divided by the average monthly number of individuals employed during the same preceding calendar year as reported on such contribution reports. The amount thus obtained shall be divided by 52 and the average weekly wage, rounded to the nearest cent, thus determined. Sixty percent of the average weekly wage shall constitute the maximum weekly benefit amount and shall apply to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year, except that the maximum weekly benefit amount for benefit years commencing on or after July 1, 1984, through January 3, 1987, is the amount calculated under this subsection after January 1, 1984, and on or before May 31, 1984. Such maximum weekly benefit amount, if not a multiple of $1, shall be computed to the nearest lower full dollar amount.

(3) The minimum weekly benefit amount shall be 15% of the average weekly wage. The minimum weekly benefit amount, if not a multiple of $1, shall be computed to the nearest lower full dollar amount.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(b); amd. Sec. 2, Ch. 688, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 193, L. 1983; amd. Sec. 7, Ch. 371, L. 1985.

Compiler's Comments

1985 Amendment: In (1) at beginning of first sentence, inserted "For claims filed before July 7, 1985", and inserted last three sentences referring to calculation of claims effective July 7, 1985.

1985, and after; and in (2) at end of third sentence, inserted exception clause referring to benefit years commencing on or after July 1, 1984, through January 3, 1987.

1983 Amendment: Deleted former (1), which read: "Any individual whose benefit year begins on or after July 1, 1971, shall receive as his weekly benefit amount an amount equal to one twenty-sixth of his total wages for insured work paid during the calendar quarter of his base period in which his wages were highest. Such weekly benefit amount, if not a multiple of $1, shall be rounded to the nearest multiple of $1."; at beginning of (1), deleted "On and after July 1, 1980"; inserted second sentence of (1); at end of (2), substituted "lower full dollar amount" for "multiple of $1"; inserted last sentence of (3); deleted former (5), which read: "The department shall prepare and publish annually a benefit schedule in accordance with the provisions of this subsection."

1981 Amendment: Substituted "department" for "division" in (5) (now deleted).

Cross-References

"Base period" defined, 39-51-201.
"Benefit year" defined, 39-51-201.
"Benefits" defined, 39-51-201.
"Calendar quarter" defined, 39-51-201.
"Department" defined, 39-51-201.
"Wages" defined, 39-51-201.

39-51-2202. Partial payment of benefits. Partial payment for a week of unemployment as used in this section shall be the claimant's weekly benefit amount less 50% of wages earned in excess of one-fourth of his weekly benefit amount. Such wages and the one-fourth weekly benefit amount, if not a multiple of $1, shall be rounded to the nearest lower full dollar amount.

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(a)(3)(A); amd. Sec. 2, Ch. 193, L. 1983.

Compiler's Comments

1983 Amendment: Near end of last sentence, substituted "nearest lower full dollar amount" for "nearest dollar".

Cross-References

"Wages" defined, 39-51-201.
"Week" defined, 39-51-201.
"Weekly benefit amount" defined, 39-51-201.

39-51-2203. Reduction of benefits because of amounts received from certain other sources. (1) Claimant's weekly benefit amount shall be reduced by the amount that he is receiving from a governmental or other pension, retirement pay, annuity, or other similar periodic payment which is based on work for and contributed to in whole or in part by a base-period employer. However, the amount by which weekly benefits are to be reduced shall be determined by the ratio of the employer's contributions to the fund from which the payment is made so that the claimant will receive credit only for the proportion of his contributions to that fund.

(2) However, if the service performed for the base-period employer does not affect either the eligibility for or the amount of the pension or other type of retirement benefit received from the plan maintained or contributed to by the base-period employer, the reduction requirement of subsection (1) does not apply.

(3) The exception in subsection (2) is not applicable to the receipt of social security and/or railroad retirement benefits.

(4) For the purposes of subsection (1), the department shall, by rule, adopt minimum federal offset requirements as imposed by the federal Employee Retirement Income Security Act of 1974, P.L. 94-566, as amended in 1980 by P.L. 96-364, and as may be amended after March 11, 1981.

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd.

Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(a)(3)(B); amd. Sec. 1, Ch. 41, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 145, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted last sentence for "If a claimant is receiving payments under the federal Social Security Act or the federal Railroad Retirement Act or from a pension to which he has contributed in part, his weekly benefit amount must be reduced by 50% of the amount that he is receiving from such payments."

1981 Amendments: Chapter 41 deleted "This provision does not apply to the receipt of benefits under the federal Social Security Act, as amended" from (1); added the last sentence of (1) and added subsections (2) and (3). Subsection (4) was added by Governor's amendment.

Chapter 349 substituted "department" for "division" in (4).

Cross-References

"Benefit" defined, 39-51-201.
"Department" defined, 39-51-201.
"Weekly benefit amount" defined, 39-51-201.

39-51-2204. Duration of benefits. Any otherwise eligible individual shall be entitled during his benefit year to benefits for the total number of weeks appearing in the following table on the line which includes his ratio of total base period earnings to highest quarter base period earnings:

Ratio of Total Base Period Earnings to High Quarter At Least	Less Than	Week's Duration of Benefits
0	1.25	8
1.25	1.50	10
1.50	1.75	12
1.75	2.00	14
2.00	2.25	16
2.25	2.50	18
2.50	2.75	20
2.75	3.00	22
3.00	3.25	24
3.25	—	26

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(d); amd. Sec. 3, Ch. 688, L. 1979.

Cross-References

"Base period" defined, 39-51-201.
"Benefit year" defined, 39-51-201.
"Benefits" defined, 39-51-201.

39-51-2205. Continuation of benefits at death of claimant. All accrued benefits due and payable at the time of death to any deceased claimant shall be paid to the surviving spouse or, if there be no surviving spouse, then to the surviving children or, if there be no surviving children, then to the next of kin without the necessity of any recipient obtaining letters testamentary or of administration.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(g).

Cross-References

"Benefits" defined, 39-51-201.

39-51-2206. Collection of benefit overpayments. A person who receives benefits not authorized by this chapter shall repay to the department, either directly or, as authorized by the department, by offset of future benefits to which he may be entitled or by a combination of both such methods, a sum equal to the amount received by him unless the department finds that the benefits were received through no fault of the person and the recovery of such benefits would be against equity and good conscience.

History: En. Sec. 15, Ch. 125, L. 1985.

Compiler's Comments

Applicability of Chapter: This section was enacted without a codification instruction, and therefore Title 39, chapter 51, was not expressly made to apply to this section. However, Ch. 125, L. 1985, also contained numerous amendments to chapter 51, and the obvious intent was that this section be codified as an integral part of chapter 51 and that pertinent portions of chapter 51 apply to this section.

Part 23

Benefit Disqualification

39-51-2301. Disqualification not to be confined to a single benefit year. A disqualification pursuant to the provisions of this part may not be confined to a single benefit year.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(h).

Cross-References

"Benefit year" defined, 39-51-201.

39-51-2302. Disqualification for leaving work without good cause. (1) An individual shall be disqualified for benefits if he has left work without good cause attributable to his employment.

(2) He may not be disqualified if the department finds that he left his employment because of personal illness or injury not associated with misconduct or left his employment upon the advice of a licensed and practicing physician and, after recovering from his illness or injury when recovery is certified by a licensed and practicing physician, he returned to his employer and offered his service and his regular or comparable suitable work was not available, if so found by the department, provided he is otherwise eligible.

(3) To requalify for benefits, an individual must perform services other than self-employment for which remuneration is received equal to or in excess of six times his weekly benefit amount subsequent to the week in which the act causing the disqualification occurred unless he has been in regular attendance at an educational institution accredited by the state of Montana for at least 3 consecutive months from the date of his enrollment.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L.

1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (a); amd. Sec. 4, Ch. 688, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 8, Ch. 371, L. 1985.

Compiler's Comments

1985 Amendment: At end of (1) inserted "attributable to his employment".

1981 Amendment: Substituted "department" for "division" throughout (2).

Cross-References

"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.
"Weekly benefit amount" defined, 39-51-201.

39-51-2303. Disqualification for discharge due to misconduct. An individual shall be disqualified for benefits if he has been discharged:

(1) for misconduct connected with his work or affecting his employment until an individual has performed services, other than self-employment, for which remuneration is received equal to or in excess of eight times his weekly benefit amount subsequent to the week in which the act causing the disqualification occurred.

(2) for gross misconduct connected with his work or committed on the employer's premises, as determined by the department, for a period of 12 months.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (b); amd. Sec. 5, Ch. 688, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" in (2).

Cross-References

"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.
"Gross misconduct" defined, 39-51-201.
"Weekly benefit amount" defined, 39-51-201.

39-51-2304. Disqualification for failure to apply for or to accept suitable work. (1) Effective April 1, 1977, an individual is disqualified for benefits if he fails without good cause either to apply for available and suitable work when so directed by the employment office or the department or to accept suitable work offered to him which he is physically able and mentally qualified to perform or to return to his customary self-employment, if any, when so directed by the department. Such disqualification continues for the week in which such failure occurs and until the individual has performed services, other than self-employment, for which remuneration is received equal to or in excess of his weekly benefit amount in 6 separate weeks subsequent to the date the act causing the disqualification occurred, with 6 weeks' reduction in benefit duration, as determined by the department, provided he has not left this work under disqualifying circumstances.

(2) In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and previous earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(3) Notwithstanding any other provisions of this chapter, including subsection (4), no work may be considered suitable and benefits may not be

denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(b) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(c) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(4) Subject to subsection (3), after 13 weeks of unemployment, suitable work is work that meets the criteria in this section and that offers 75% of the individual's earnings in his previous insured work in his customary occupation. No individual, however, is required to accept a job paying less than the federal minimum wage.

History: **En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (c); amd. Sec. 49, Ch. 397, L. 1979; amd. Sec. 6, Ch. 688, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 409, L. 1985.**

Compiler's Comments

1985 Amendment: In (3) near beginning, inserted "including subsection (4)"; and in (4), at beginning inserted "Subject to subsection (3)" and deleted "During the first 13 weeks of unemployment, suitable work is work that meets the criteria in this section and that offers wages equal to the prevailing wage for that area in the individual's customary occupation", at end of first sentence, after "75% of the", substituted "individual's earnings in his previous insured work in his customary occupation" for "prevailing wage", and inserted last sentence.

1981 Amendment: Substituted "department" for "division" throughout the section.

Cross-References

"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.
"Employment office" defined, 39-51-201.
"Wages" defined, 39-51-201.
"Weekly benefit amount" defined, 39-51-201.

39-51-2305. Disqualification when unemployment due to strike. (1) An individual shall be disqualified for benefits for any week with respect to which the department finds that his total unemployment is due to a strike which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the department that:

(a) he is not participating in or financing or directly interested in the labor dispute which caused the strike; and

(b) he does not belong to a grade or class of workers of which, immediately before the commencement of the strike, there were members employed at the premises at which the strike occurs, any of whom are participating in or financing or directly interested in the dispute.

(2) If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this section, be deemed to be a separate factory, establishment, or other premises.

(3) If the department, upon investigation, shall find that such labor dispute is caused by the failure or refusal of any employer to conform to the

provisions of any law of the state wherein the labor dispute occurs or of the United States pertaining to collective bargaining, hours, wages, or other conditions of work, such labor dispute shall not render the workers ineligible for benefits.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (d); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 400, L. 1985.

Compiler's Comments

1985 Amendment: In (1) at beginning deleted "Effective April 1, 1977"; in introductory clause of (1) and in (1)(a) changed "stoppage of work" to "strike"; and in (1)(b) changed "stoppage" to "strike" twice.

1981 Amendment: Substituted "department" for "division" throughout the section.

Cross-References

"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.
"State" defined, 39-51-201.
"Wages" defined, 39-51-201.

39-51-2306. Disqualification because of receipt of certain other wages, compensation, or benefits. (1) Effective April 1, 1977, an individual shall be disqualified for benefits for any week with respect to which he is receiving or has received payment in the form of:

(a) wages in lieu of notice or separation or termination allowance;

(b) compensation for disability under the workers' compensation law or the occupational disease law of this or any other state or under a similar law of the United States or under the social security disability law. However, when an injured claimant has ceased to draw compensation benefits and shall have returned to the labor market, he shall then be entitled to receive unemployment compensation benefits under this chapter if he shall be otherwise qualified. Compensation which is received as a payment for a permanent partial disability shall not be computed to be spread over a period of weeks in advance so as to bar the recipient from receiving unemployment compensation benefits under this chapter, provided the recipient has returned to the labor market and is otherwise qualified.

(c) benefits under the Railroad Unemployment Insurance Act or any state unemployment compensation act or similar laws of any state or of the United States. This disqualification does not apply to any week with respect to which an individual is receiving or has received benefits under an unemployment compensation law of another state or of the United States if such benefits are paid pursuant to 39-51-504.

(2) Receipt of any wages, compensation, or benefits as set forth in subsection (1) of this section after payment of unemployment benefits and with respect to the same week for which unemployment benefits were received will thereupon require such individual to repay such unemployment benefits, and the department may collect such unemployment benefits in the same manner as provided for collection of benefits under 39-51-3206.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L.

1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (e); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments
1981 Amendment: Substituted "department" for "division" in (2).

Cross-References
"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.
"State" defined, 39-51-201.
"Wages" defined, 39-51-201.
"Week" defined, 39-51-201.

39-51-2307. Disqualification because of student status. (1) Effective April 1, 1977, an individual shall be disqualified for benefits during the school year (within the autumn, winter, and spring seasons of the year) or the vacation periods within such school year or during any prescribed school term if claimant is a student regularly attending an established educational institution.

(2) Notwithstanding any other provisions in this section, no otherwise eligible individual shall be denied benefits for any week because he is in training approved by the department, nor shall such individual be denied benefits with respect to any week in which he is in training approved by the department by reason of the application of provisions in 39-51-2304 or the application of provisions in 39-51-2104(2).

History: **En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (f); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 13, Ch. 125, L. 1985.**

Compiler's Comments
1985 Amendment: At end of (2) substituted "(2)" for "(3)" after "39-51-2104".
1981 Amendment: Substituted "department" for "division" throughout (2).

Cross-References
"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.
"Week" defined, 39-51-201.

39-51-2308. Disqualification because principal occupation is self-employment. Effective April 1, 1977, an individual shall be disqualified for benefits if his principal occupation is self-employment.

History: **En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (g).**

Cross-References
"Benefits" defined, 39-51-201.

Part 24

Claims for Benefits

39-51-2401. Claims to be made in accordance with regulations — employers to post and make available copies of such regulations. Claims for benefits shall be made in accordance with such regulations as the department may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his service and shall make available to each such individual at the time he becomes unemployed a printed statement of such regulations. Such printed statements shall be supplied by the department to each employer without cost to him.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(a); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

Cross-References

"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.

39-51-2402. Initial determination — redetermination. (1) A representative designated by the department and hereinafter referred to as a deputy shall promptly examine the claim and, on the basis of the facts found by him, shall either determine whether or not such claim is valid and, if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable, and the maximum duration thereof or shall refer such claim or any question involved therein to an appeals referee who shall make his decision with respect thereto in accordance with the procedure prescribed in 39-51-2403. The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons therefor.

(2) The deputy may for good cause reconsider his decision and shall promptly notify the claimant and such other interested parties of his amended decision and the reasons therefor.

(3) No determination or redetermination of an initial or additional claim shall be made under this section unless 5 days' notice of the time and place of the claimant's interview for examination of the claim is mailed to each interested party.

(4) A determination or redetermination shall be deemed final unless an interested party entitled to notice thereof applies for reconsideration of the determination or appeals therefrom within 5 days after delivery of such notification or within 7 days after such notification was mailed to his last known address, provided that such period may be extended for good cause.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(b), (c); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" in (1).

Cross-References

"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.
"Week" defined, 39-51-201.
"Weekly benefit amount" defined, 39-51-201.

39-51-2403. Decision of appeals referee. After a hearing, an appeals referee shall make findings and conclusions promptly and on the basis thereof affirm, modify, or reverse the deputy's determination or redetermination. Each interested party shall be furnished promptly a copy of the decision and the supporting findings and conclusions. This decision shall be final unless further review is initiated pursuant to 39-51-2404 within 5 days after delivery of such notification or within 7 days after such notification was mailed to his last known address, provided that such period may be extended for good cause.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(e).

39-51-2404. Appeal to board. Any interested party dissatisfied with a decision of an appeals referee is entitled to appeal to the board. The department will promptly transmit all records pertinent to the appeal to the board. When a decision is rendered by the board with copies of such decision to all interested parties, including the department, that decision shall become final unless an interested party requests a rehearing or initiates judicial review by filing a petition in district court within 30 days of the date of mailing of the board's decision to his last known address.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(g); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

Cross-References

"Board" defined, 39-51-201.

"Department" defined, 39-51-201.

39-51-2405. Prompt payment of claims. (1) Notwithstanding any provision in 39-51-2402 or 39-51-2404, benefits shall be paid promptly in accordance with a determination or redetermination under 39-51-2402 or the decision of an appeals referee, the board, or a reviewing court under 39-51-2404 upon the issuance of such determination, redetermination, or decision regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review that is provided with respect thereto in 39-51-2404, as the case may be, or the pendency of any such application, filing, or petition, unless and until such determination, redetermination, or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied for weeks of unemployment thereafter in accordance with such modifying or reversing redetermination or decision.

(2) If a deputy's determination or redetermination allowing benefits is affirmed in any amount by an appeals referee or by the board or if a decision of an appeals referee allowing benefits is affirmed in any amount by the board, such benefits shall be paid promptly regardless of any further appeal or the disposition of such appeal and no injunction, supersedeas, stay, or other writ or process suspending the payment of such benefits shall be issued by the board or any court. Benefits shall not be paid for any weeks of unemployment involved in such modification or reversal that begins after such final decision.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(f).

Cross-References

"Benefits" defined, 39-51-201.

"Board" defined, 39-51-201.

39-51-2406. Continuing jurisdiction of department over claims. The department shall have continuing jurisdiction over all claims filed for benefits to revise, modify, alter, cancel, and amend all orders, findings, and determinations made therein at any time and shall not lose such jurisdiction unless and until the jurisdiction of such claim and subject matter thereof has been taken by a court of competent jurisdiction in a proceedings filed therein as provided for in subsections (2) through (6) of 39-51-2410.

History: En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(part); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division".

Cross-References

"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.

39-51-2407. Procedure for disputed claims to be prescribed by regulation. The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the department or the board for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules or procedure.

History: En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(part); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division".

Cross-References

"Board" defined, 39-51-201.
"Department" defined, 39-51-201.

39-51-2408. Disputed claim — records of all proceedings to be kept. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded but need not be transcribed unless the disputed claim is further appealed.

History: En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(part).

39-51-2409. Witness fees. Witnesses subpoenaed pursuant to 39-51-2406 through 39-51-2410 shall be allowed fees at a rate fixed by the department. Such fees shall be deemed a part of the expense of administering this chapter.

History: En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(b); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division".

Cross-References

"Department" defined, 39-51-201.

39-51-2410. Finality of board's decision — judicial review. (1) Any decision of the board in the absence of an appeal therefrom as herein provided shall become final 30 days after the date of notification or mailing thereof, except in the case of the department when such decision becomes final 20 days following the board's decision, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the board. The department shall be deemed to be a party to any judicial action involving any such decision and may be represented in any such action by an attorney employed by the department or at the department's request, by the attorney general.

(2) Within 30 days after the date of notification or mailing of the decision of the board, any party aggrieved thereby may secure judicial review thereof by commencing an action in the district court of the county in which said party resides and in which action any other party to the proceeding before the board shall be made a defendant. In such action a petition, which need not be verified but which shall state the grounds upon which a review is sought, shall be served upon the commissioner of labor and industry and all other interested parties in the manner provided in the Montana Rules of Civil Procedure.

(3) With its answer, the department shall certify and file with said court all documents and papers and a transcript of all testimony taken in the matter, together with the board's findings of fact and decision. The board may also in its discretion certify to such court questions of law involved in any decision by it.

(4) Whenever the department seeks review of a decision of the board, all interested parties shall be served with a copy of its petition together with all documents filed with the court.

(5) In any judicial proceeding under 39-51-2406 through 39-51-2410, the findings of the board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive and the jurisdiction of said court shall be confined to questions of law. Such action and the questions so certified shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workers' compensation law of this state.

(6) An appeal may be taken from the decision of the district court to the supreme court of Montana in the same manner, but not inconsistent with the provisions of this chapter, as is provided in civil cases. It shall not be necessary in any judicial proceeding under this section to enter exceptions to the rulings of the board and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the department shall enter an order in accordance with such determination.

History: En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(c), (d); amd. Sec. 4, Ch. 349, L. 1981; amd. Sec. 14, Ch. 125, L. 1985.

Compiler's Comments

1985 Amendment: At end of (2) after "commissioner of labor and industry", substituted "and all other interested parties in the manner provided in the Montana Rules of Civil Procedure" for "or his designee and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as there are defendants and the department shall forthwith mail one such copy to each such defendant".

1981 Amendment: Substituted "department" for "division" throughout the section; substituted "commissioner of labor and industry or his designee" for "administrator of the division or the administrator's designee" in the second sentence of (2).

Cross-References

"Board" defined, 39-51-201.

"Department" defined, 39-51-201.

Part 25

Extended Benefits

39-51-2501. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Extended benefit period" means a period which:

(a) begins with the third week after a week for which there is a state "on" indicator, provided that no extended benefit period may begin by reason of a state "on" indicator before the 14th week following the end of a prior extended benefit period which was in effect with respect to this state; and

(b) ends with the third week after the first week for which there is a state "off" indicator or the 13th consecutive week of such period.

(2) (a) "Rate of insured unemployment", for purposes of 39-51-2504 and 39-51-2505, means the percentage derived by dividing the average weekly number of individuals filing claims for regular benefits in this state for weeks of unemployment with respect to the most recent 13-consecutive-week period, as determined by the department on the basis of its reports to the U.S. secretary of labor, by the average monthly employment covered under this chapter for the first 4 of the most recent 6 completed calendar quarters ending before the end of such 13-week period.

(b) Computations required by the provisions of subsection (2)(a) shall be made by the department in accordance with regulations prescribed by the U.S. secretary of labor.

(3) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85, other than extended benefits.

(4) "Extended benefits" means benefits, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85, payable to an individual under the provisions of this part for weeks of unemployment in his eligibility period.

(5) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(6) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(a) has received, prior to such week, all of the regular benefits that were available to him under this chapter or any other state law, including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85, in his current benefit year that includes such week; provided that, for the purposes of this subsection, an individual shall be deemed to have received all of the regular benefits that were available to him although, as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits;

(b) his benefit year having expired prior to such week, has no or insufficient wages on the basis of which he could establish a new benefit year that would include such week;

(c) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965, and such other federal laws as are specified in regulations issued by the U.S. secretary of labor; and

(d) has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada, but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law, he is considered an exhaustee.

(7) "State law" means the unemployment insurance law of any state approved by the U.S. secretary of labor under section 3304 of the Internal Revenue Code of 1954.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(1), (a)(6) thru (a)(11), (f)(2); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 9, Sp. L. 1981; amd. Sec. 4, Ch. 84, L. 1983.

Compiler's Comments

1983 Amendment: In (2)(a), before "reports to the U.S. secretary" changed "his" to "its".

1981 Special Session Amendment: Deleted "whichever of the following weeks occurs first: (i) a week for which there is a national "on" indicator; or (ii)" after "third week after" at the beginning of (1)(a); deleted "either of the following weeks, whichever occurs later:" after "ends with" at the beginning of (1)(b); deleted "both a national "off" indicator and" before "a state "off" indicator" in (1)(b); inserted "for regular benefits" after "individuals filing claims" in (2)(a).

1981 Regular Session Amendment: Substituted "department" for "division" in (2)(a) and (2)(b).

Cross-References

"Benefits" defined, 39-51-201.

"Department" defined, 39-51-201.

"State" defined, 39-51-201.

"Week" defined, 39-51-201.

39-51-2502. Repealed. Sec. 5, Ch. 9, Sp. L. 1981.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(2).

39-51-2503. Repealed. Sec. 5, Ch. 9, Sp. L. 1981.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(3).

39-51-2504. State "on" indicator — when. There is a state "on" indicator for this state for a week if the department determines, in accordance with the regulations of the U.S. secretary of labor, that:

(1) (a) the rate of insured unemployment equals or exceeds 5% for any such week and the immediately preceding 12 weeks; and

(b) the insured unemployment rate equals or exceeds 120% of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years; or

(2) if the rate of insured unemployment for such week is 5% or more but the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years is less than 120%, the insured unemployment rate for such week and the immediately preceding 12 weeks is 6% or more.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch.

368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(4); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 2, Ch. 9, Sp. L. 1981.

Compiler's Comments

1981 Special Session Amendment: Deleted "for the period consisting of" following "labor, that" in the introductory clause; inserted "the rate of insured unemployment equals or exceeds 5% for any" at the beginning of (1)(a); deleted "the rate of insured unemployment (not seasonally adjusted) under this chapter" from the end of (1)(a); substituted "the insured unemployment rate equals or exceeds" for "equaled or exceeded" at the beginning of (1)(b); substituted "or" for "and" at the end of (1)(b); substituted present text of (2) for "equaled or exceeded 4%".

1981 Regular Session Amendment: Substituted "department" for "division".

Cross-References

"Department" defined, 39-51-201.
"Week" defined, 39-51-201.

39-51-2505. State "off" indicator — when. There is a state "off" indicator for this state for a week if the department determines, in accordance with the regulations of the U.S. secretary of labor, that:

(1) for the period consisting of such week and the immediately preceding 12 weeks the rate of insured unemployment (not seasonally adjusted) under this chapter is less than 5%; or

(2) the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years is less than 120%.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(5); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 3, Ch. 9, Sp. L. 1981.

Compiler's Comments

1981 Special Session Amendment: Added "is less than 5%; or" to the end of (1); deleted "was less than 120% of" from the beginning of (2); added "is less than 120%" at the end of (2); deleted former subsection (2) that read: "was less than 4%".

1981 Regular Session Amendment: Substituted "department" for "division" throughout the section.

Cross-References

"Department" defined, 39-51-201.
"Week" defined, 39-51-201.

39-51-2506. Beginning and termination of extended benefit period — announcement of. Whenever an extended benefit period is to become effective in this state as a result of a state "on" indicator, or an extended benefit period is to be terminated in this state as a result of state "off" indicators, the department shall make an appropriate public announcement.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(f)(1); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 4, Ch. 9, Sp. L. 1981.

Compiler's Comments

1981 Special Session Amendment: Deleted "(or in all states)" after "effective in this state" near the beginning of the section; deleted "or a national" before ""on" indicator"; deleted "and national" before ""off" indicators".

1981 Regular Session Amendment: Substituted "department" for "division".

Cross-References

"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.

39-51-2507. Effect of state law provisions relating to regular benefits on claims for and the payment of extended benefits. Except when the result would be inconsistent with the other provisions of this part, as provided in the regulations of the department, the provisions of this chapter which apply to claims for or the payment of regular benefits shall apply to claims for and the payment of extended benefits.

History: **En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(b); amd. Sec. 1, Ch. 349, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department" for "division".

Cross-References

"Benefits" defined, 39-51-201.

"Department" defined, 39-51-201.

39-51-2508. Eligibility requirements for extended benefits — disqualifications — acceptance of suitable work. (1) An individual shall be eligible to receive extended benefits with respect to any week of unemployment in this eligibility period only if the department finds that with respect to such week:

(a) he is an exhaustee, as defined in 39-51-2501(6);

(b) he is not disqualified for the receipt of regular benefits pursuant to part 23 of this chapter and, if he is disqualified, he satisfies the requirements for requalification in that part; and

(c) he has satisfied the other requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits.

(2) In addition to the disqualifications provided for in subsection (1)(b), an individual is disqualified for extended benefits if he fails to seek work. Such disqualification continues for the week in which such failure occurs and until the individual has performed services, other than self-employment, for which remuneration is received equal to or in excess of his weekly benefit amount in 4 separate weeks subsequent to the date the act causing the disqualification occurred.

(3) A regular benefit claimant who is disqualified for gross misconduct under 39-51-2303(2) may not be paid extended benefits unless he has earned at least eight times the weekly benefit amount after the date of such disqualification.

(4) A regular benefit claimant who voluntarily leaves work to attend school and, pursuant to 39-51-2302(3), requalifies for regular benefits may not be paid extended benefits unless he has earned at least six times the weekly benefit amount.

(5) For the purposes of determining eligibility for extended benefits, the department shall by rule define the term "suitable work". Such definition shall be in accordance with the definition required by the Omnibus Reconciliation Act of 1980, P.L. 96-499, and as may be amended after March 19, 1981.

History: **En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch.**

368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(c); amd. Sec. 1, Ch. 99, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 272, L. 1983.

Compiler's Comments

1983 Amendment: At end of (1)(b), deleted "except that subsections (1), (2), and (4) of 39-51-2304 do not apply to this section"; at end of first sentence of (2), substituted "if he fails to seek work" for "if he fails without good cause either to apply for available and suitable work, to accept suitable work offered to him, or, when so directed by the department, to return to his customary occupation, if any"; at end of (2), deleted ", with 4 weeks' reduction in benefit duration, as determined by the department, provided he has not left this work under disqualifying circumstances"; inserted (3) and (4); at beginning of (5), substituted "For the purposes of determining eligibility for extended benefits" for "For the purposes of subsection (2)".

1981 Amendments: Chapter 99 added (1)(b), relating to disqualification and requalification under part 23 of this chapter; in (1)(c), inserted "other" before "requirements"; deleted ", including not being subject to a disqualification for the receipt of benefits" at the end of (1)(c); added (2) and (3) (now (5)).

Chapter 349 substituted "department" for "division" throughout the section.

Cross-References

"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.
"Week" defined, 39-51-201.
"Weekly benefit amount" defined, 39-51-201.

39-51-2509. Weekly extended benefit amount. The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(d).

Cross-References

"Week" defined, 39-51-201.
"Weekly benefit amount" defined, 39-51-201.

39-51-2510. Total extended benefit amount. The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

(1) 50% of the total amount of regular benefits which were payable to him under this chapter in his applicable benefit year;

(2) 13 times his weekly benefit amount which was payable to him under this chapter for a week of total unemployment in the applicable benefit year.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(e).

Cross-References

"Benefit year" defined, 39-51-201.
"Benefits" defined, 39-51-201.
"State" defined, 39-51-201.
"Week" defined, 39-51-201.
"Weekly benefit amount" defined, 39-51-201.

39-51-2511. Extended benefits filed interstate. Except during the first 2 weeks of an extended benefit period, no extended benefits will be paid to an individual filing from a state in which the state indicator is "off".

History: En. Sec. 1, Ch. 58, L. 1981.

Part 26

Trade Readjustment

39-51-2601. Limitations on weeks of combined extended benefits and trade readjustment allowances. Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would but for this section be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

History: **En. Sec. 2, Ch. 7, Sp. L. 1981.**

39-51-2602. Approved trade readjustment training. (1) Notwithstanding any other provisions of this chapter, no otherwise eligible individual may be denied benefits for any week:

(a) because he is in training approved under Section 236(a)(1) of the federal Trade Act of 1974;

(b) in which he is in such approved training by reason of leaving work to enter such training if the work left is not suitable employment; or

(c) because of the application to any such week in training of provisions in this chapter or any federal unemployment insurance law administered by this agency, relating to availability for work, active search for work, or refusal to accept work.

(2) For purposes of this section, "suitable employment" means work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the federal Trade Act of 1974, and for which the wages are not less than 80% of the individual's average weekly wage as determined for the purposes of the federal Trade Act of 1974.

History: **En. Sec. 1, Ch. 7, Sp. L. 1981.**

Parts 27 through 30 reserved

Part 31

Protections and Limitations on Rights and Benefits

39-51-3101. Protection against self-incrimination. No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the department or board, the chairman of an appeal tribunal, or any duly authorized representative of either of them or in obedience to the subpoena of the department or board or any member thereof or any duly authorized representative of the department in any cause or proceeding before the department or board on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture, but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

History: En. Subd. (h), Sec. 11, Ch. 137, L. 1937; amd. Sec. 16, Ch. 368, L. 1975; R.C.M. 1947, 87-127; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

Cross-References

Self-incrimination, Art. II, sec. 25, Mont. Const.

"Board" defined, 39-51-201.

"Department" defined, 39-51-201.

39-51-3102. Certain agreements in violation of chapter void. (1) Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this chapter shall be void.

(2) Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions required under this chapter from such employer shall be void.

History: En. Subd. (a), Sec. 15, Ch. 137, L. 1937; amd. Sec. 9, Ch. 164, L. 1941; R.C.M. 1947, 87-141(part).

Cross-References

"Benefits" defined, 39-51-201.

"Contributions" defined, 39-51-201.

39-51-3103. Employer prohibited from making, requiring, or accepting deduction from wages or requiring or accepting waiver of rights under chapter — penalty for violation. (1) No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him or require or accept any waiver of any right hereunder by an individual in his employ.

(2) Any employer or officer or agent of an employer who violates any provision of this section or 39-51-3102 shall, for each offense, be fined not more than $1,000 or be imprisoned for not more than 6 months or both.

History: En. Subd. (a), Sec. 15, Ch. 137, L. 1937; amd. Sec. 9, Ch. 164, L. 1941; R.C.M. 1947, 87-141(part).

Cross-References

"Contributions" defined, 39-51-201.

"Wages" defined, 39-51-201.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

39-51-3104. Limitation of fees in claim for benefits — penalty for violation. (1) No individual claiming benefits shall be charged fees of any kind in any proceeding under this chapter by the department or its representatives or by any court or any officer thereof.

(2) Any individual claiming benefits in any proceeding before the chairman of an appeal tribunal or the department or its representatives, the board, or a court may be represented by counsel or other duly authorized agent, but no such counsel or agents shall either charge or receive for such services more than an amount approved by the department or board.

(3) Any person who violates any provision of this section shall, for each such offense, be fined not more than $500 or imprisoned for not more than 6 months or both.

History: En. Subd. (b), Sec. 15, Ch. 137, L. 1937; amd. Sec. 9, Ch. 164, L. 1941; amd. Sec. 29, Ch. 368, L. 1975; R.C.M. 1947, 87-142; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

Cross-References

"Benefits" defined, 39-51-201.

"Board" defined, 39-51-201.	Classification of offenses, 45-1-201.
"Department" defined, 39-51-201.	"Misdemeanor" defined, 45-2-101.

39-51-3105. Assignment, pledge, or encumbrance of right to benefits void — benefits exempt from levy, execution, attachment, or other remedy for collection of debt — exception. Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this chapter shall be void, and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt, and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessaries furnished to such individual or his spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this section shall be void.

History: En. Subd. (c), Sec. 15, Ch. 137, L. 1937; amd. Sec. 9, Ch. 164, L. 1941; R.C.M. 1947, 87-143.

Cross-References

"Benefits" defined, 39-51-201.

39-51-3106. Child support interception of unemployment benefits. (1) For purposes of this section, the following definitions apply:

(a) "Unemployment benefits" means any benefits payable under the Montana unemployment insurance law, including amounts payable by the department pursuant to an agreement under any federal law providing for benefits, assistance, or allowances with respect to unemployment.

(b) "Child support obligations" includes only obligations that are being enforced pursuant to a plan described in section 454 of the Social Security Act which has been approved by the secretary of health and human services under Part D of Title IV of the Social Security Act.

(c) "State or local child support enforcement agency" means any agency of a state or political subdivision thereof operating pursuant to a plan provided for in subsection (1)(b).

(2) An individual filing a new claim for unemployment benefits shall, at the time of filing the claim, disclose whether or not he owes child support obligations. If an individual discloses that he owes child support obligations and the individual is determined to be eligible for unemployment benefits, the department shall notify the state or local child support enforcement agency enforcing such obligation that the individual has been determined to be eligible for unemployment benefits.

(3) The department shall deduct and withhold from any unemployment benefits payable to an individual owing child support obligations:

(a) the amount specified by the individual to the department to be deducted and withheld under this subsection if neither subsection (3)(b) nor (3)(c) is applicable;

(b) the amount, if any, determined pursuant to an agreement submitted to the department under section 454(20)(B)(i) of the Social Security Act by the state or local child support enforcement agency, unless subsection (3)(c) is applicable; or

(c) any amount otherwise required to be so deducted and withheld from such unemployment benefits pursuant to legal process, as that term is defined in section 462(e) of the Social Security Act, properly served upon the department.

(4) The department shall pay any amount deducted and withheld under subsection (3) to the appropriate state or local child support enforcement agency.

(5) Deductions may be made pursuant to this section only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the department under this section.

(6) Any amount deducted and withheld under subsection (3) must be treated as if it were paid to the individual as unemployment benefits and paid by such individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligations.

History: En. Sec. 1, Ch. 8, Sp. L. 1981; amd. Sec. 5, Ch. 84, L. 1983.

Compiler's Comments

1983 Amendment: Throughout section, changed "compensation" to "benefits" and "division" to "department".

Part 32

General Penalties

39-51-3201. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits — administrative penalty and remedy. A person who makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact in order to obtain or increase any benefit or other payment under this chapter or under an employment security law of any other state or territory or the federal government, either for himself or for any other person, is:

(1) disqualified for benefits thereafter for a period of not more than 52 weeks, beginning with the first compensable week following the date of such determination by the department, the length of time of the disqualification as herein described to be determined by the department in accordance with the severity of each case; and

(2) required to repay to the department, either directly or as authorized by the department, by offset of future benefits to which he may be entitled, or by a combination of both such methods, a sum equal to the amount wrongfully received by him plus interest at the rate of 18% a year computed from the time the false statement or representation or the failure to disclose a material fact occurred, except that future benefits may not be used to offset the interest due. However, he is not required to repay any amount wrongfully obtained more than 5 years prior to the date of the department's determination that he made false statements, willful nondisclosure, or misrepresentation.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L.

1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(1); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 226, L. 1985.

Compiler's Comments

1985 Amendment: In first sentence of (2), after "amount wrongfully received by him", inserted "plus interest at the rate of 18% a year computed from the time the false statement or representation or the failure to disclose a material fact occurred, except that future benefits may not be used to offset the interest due".

1981 Amendment: Substituted "department" for "division" throughout the section.

39-51-3202. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits — criminal penalty. A person who, in order to obtain or increase for himself or for any other person benefits under this chapter or under an employment security law of any other state or territory or the federal government, knowingly makes a false statement or representation or knowingly fails to disclose a material fact is guilty of a crime under 45-7-203, and the department may cause criminal proceedings to be initiated against him.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(2); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division".

Cross-References

"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.
"State" defined, 39-51-201.
"Week" defined, 39-51-201.

39-51-3203. Obtaining benefits through deception or other fraudulent means — criminal penalty. A person who, through deception or other fraudulent means, obtains benefits which he is not entitled to under this chapter or under an employment security law of any other state or territory or the federal government or a person legally accountable for such conduct under 45-2-302 is guilty of a crime under 45-6-301, and a county attorney may initiate criminal proceedings against him.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(3).

Cross-References

"Benefits" defined, 39-51-201.
"State" defined, 39-51-201.

39-51-3204. Employing unit making false statement or representation, failing to disclose material fact, or failing or refusing to make contributions or other payments, furnish reports, or permit inspection or copying of records — criminal penalty. Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact to prevent or reduce the payment of benefits to any individual entitled thereto or to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required from an employing unit under this chapter or under the employment security law of any other state or territory or the federal government or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder shall be punished by a fine of not less than $50 or more than $500 or by imprisonment for not less than 3 days or more than 30 days in the county jail or by both such fine and imprisonment, and each such false statement or representation or failure to disclose a material fact and each day of such failure or refusal shall constitute a separate offense.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(4).

Cross-References
"Benefits" defined, 39-51-201.
"Contributions" defined, 39-51-201.
"Employing unit" defined, 39-51-201.
"State" defined, 39-51-201.

39-51-3205. Criminal penalty for violations of chapter where no penalty prescribed. Any person who shall willfully violate any provision of this chapter or any order or rule thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than $50 or more than $500 or by imprisonment for not less than 3 days or more than 30 days in the county jail or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(5).

Cross-References
"Benefits" defined, 39-51-201.
"Contributions" defined, 39-51-201.
"Department" defined, 39-51-201.
"Fund" defined, 39-51-201.

39-51-3206. Liability for wrongful or improper receipt of benefits. Any person who, by reason of the nondisclosure or misrepresentation by him or by another of a material fact, irrespective of whether such nondisclosure or misrepresentation was known or fraudulent, has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in his case or while he was disqualified from receiving benefits shall, in the discretion of the department, either be liable to have such sum deducted from any future benefits payable to him under this chapter or shall be liable to repay to the department for the unemployment insurance fund a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in this chapter for the collection of past due contributions. An action for collection of overpaid benefits must be brought within 5 years after the date of such overpayment or it is barred.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(6); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 50, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments
1981 Amendment: Substituted "department" for "division" throughout the section.

CHAPTERS 52 THROUGH 70

RESERVED

CHAPTER 71

WORKERS' COMPENSATION

Part 1 — General Provisions

Section
39-71-101. Short title.
39-71-102. Reference to plans.
39-71-103. Compensation provisions.
39-71-104. Court to give liberal construction to chapter.
39-71-105 through 39-71-115 reserved.
39-71-116. Definitions.
39-71-117. Employer defined.
39-71-118. Employee, worker, and workman defined.
39-71-119. Injury or injured defined.
39-71-120. Independent contractor defined.
39-71-121. Disability defined.
39-71-122. Impairment defined.

Part 2 — Administrative Provisions
Division of Workers' Compensation

39-71-201. Administration fund.
39-71-202. Office of division.
39-71-203. Powers of division.
39-71-204. Rescission, alteration, or amendment by division of its orders, decisions, or awards — limitation — effect.
39-71-205. Division authorized to charge certain fees — disposition of.
39-71-206. Legal advisers of division.
39-71-207. Merit system.
39-71-208. Blank forms, minutes, and records.
39-71-209. Publication of reports and bulletins authorized.
39-71-210. Annual report of division — copies for general distribution.
39-71-211 through 39-71-220 reserved.
39-71-221. Public records of division — right to inspect.
39-71-222. Duties of administrator regarding inspection and examination of records.
39-71-223. Certified copies of public records — fees.
39-71-224. Records exempt from disclosure — separation of exempt material from nonexempt.

Part 3 — Miscellaneous Provisions

39-71-301. Certificates and certified copies as evidence.
39-71-302. What included in computing payroll.
39-71-303. Work paid for in property other than money — wages to be determined by division.
39-71-304. Books, records, and payrolls to be open to inspection — penalty for refusal.
39-71-305. Repealed.
39-71-306. Plan one employers and plan two insurers to file duplicate receipts paid for injuries and statements of medical expenditures.
39-71-307. Employers and insurers to file reports of accidents.
39-71-308. Neglect or refusal of public corporation to file payroll reports — arbitrary assessment by division.
39-71-309. Hospitals to submit schedule of fees and charges — effective period of schedule — when to be submitted.

Part 4 — Coverage, Liability, and Subrogation

39-71-401. Employments covered and employments exempted.

39-71-402. Extraterritorial application and reciprocity.
39-71-403. Plan three exclusive for state agencies — election of plan by other public corporations.
39-71-404. Repealed.
39-71-405. Liability of employer who contracts work out.
39-71-406. Deduction from wages of any part of premium a misdemeanor.
39-71-407. Liability of insurers.
39-71-408. Liability as first lien in case of bankruptcy or failure.
39-71-409. Waivers by employee invalid.
39-71-410. Employees bound by plan adopted by employer — election not to be bound by corporate officers.
39-71-411. Provisions of chapter exclusive remedy — nonliability of insured employer.
39-71-412. Liability of third party other than employer or fellow employee — additional cause of action.
39-71-413. Liability of fellow employee for intentional and malicious acts or omissions — additional cause of action.
39-71-414. Subrogation.

Part 5 — Uninsured Employers

39-71-501. Definition of uninsured employer.
39-71-502. Creation and purpose of uninsured employers' fund.
39-71-503. Administration of fund.
39-71-504. Funding of fund — option for agreement between division and injured employee.
39-71-505. Applicability of other provisions of chapter to fund.
39-71-506. Collection of payments from uninsured employer by suit.
39-71-507. Division to order uninsured employer to cease operations — noncompliance with order a misdemeanor.
39-71-508. Coordination of remedies.
39-71-509. Action against uninsured employer — limitation of employer's defenses.
39-71-510. Limitation on benefit entitlement under fund.
39-71-511. Setoffs to claim against fund.
39-71-512 through 39-71-514 reserved.
39-71-515. Independent cause of action.
39-71-516. District court venue and jurisdiction for independent cause of action.
39-71-517. Requirement to serve papers.
39-71-518. Setoffs against remaining liability.
39-71-519. Settlement.

Part 6 — Claims for Benefits

39-71-601. Statute of limitation on presentment of claim — waiver.
39-71-602. Statute of limitation not to apply during minority or mental incompetency unless guardian appointed.
39-71-603. Notice of injuries other than death to be submitted within sixty days.
39-71-604. Application for compensation.
39-71-605. Examination of employee by physician — effect of refusal to submit to examination — report and testimony of physician — cost.
39-71-606. Insurer to accept or deny claim within thirty days of receipt — notice of denial — notice to employer.
39-71-607. Suspension of payments by insurer up to thirty days pending receipt of medical information.
39-71-608. Payments within thirty days by insurer without admission of liability or waiver of defense authorized — notice.
39-71-609. Denial of claim after payments made or termination of benefits by insurer — fourteen days' notice required.
39-71-610. Termination of benefits by insurer — division order to pay disputed benefits prior to hearing — limitation on order — right of reimbursement.
39-71-611. Costs and attorneys' fees payable on denial of claim or termination of benefits later found compensable.
39-71-612. Costs and attorneys' fees that may be assessed against an employer or insurer by workers' compensation judge.
39-71-613. Regulation of attorneys' fees — forfeiture of fee for noncompliance.

39-71-614. Calculation of attorney fees.

Part 7 — Compensation and Benefits Generally

39-71-701. Compensation for injuries producing temporary total disability.
39-71-702. Compensation for injuries producing total permanent disability.
39-71-703. Compensation for injuries causing partial disability.
39-71-704. Payment of medical, hospital, and related services.
39-71-705. Compensation for loss of certain body members or loss of hearing.
39-71-706. Compensation for permanent injury to a member less than loss.
39-71-707. Compensation for loss of vision.
39-71-708. Compensation for disfigurement.
39-71-709. Partial disability benefits — indemnity benefits — election.
39-71-710. Termination of total disability benefits upon retirement.
39-71-711 through 39-71-720 reserved.
39-71-721. Compensation for injury causing death.
39-71-722. Who constitutes beneficiary to be determined as of date of accident.
39-71-723. How compensation to be divided among beneficiaries.
39-71-724. Payment of compensation to beneficiary not a resident of United States.
39-71-725. Payment of burial expense.
39-71-726. No compensation after death where death not result of injury.
39-71-727 through 39-71-735 reserved.
39-71-736. Compensation — from what date paid.
39-71-737. Compensation to run consecutively — exceptions.
39-71-738. Adjustment of compensation in case of further injuries.
39-71-739. Compensation in case of changes in degree of injury.
39-71-740. Payments — how made in most cases.
39-71-741. Compromise settlements and lump-sum payments — division approval required.
39-71-742. Who may receive payment.
39-71-743. Assignment or attachment of payments.

Part 8 — Compensation for Occupational Deafness

39-71-801. Occupational deafness compensated as provided in part.
39-71-802. Definitions.
39-71-803. Occupational deafness distinguished from traumatic loss of hearing.
39-71-804. Compensable loss of hearing confined to certain frequencies.
39-71-805. Determining percent of hearing loss.
39-71-806. Disability payments not payable for temporary hearing loss due to prolonged exposure to noise.
39-71-807. Compensation for wage loss where employee transferred due to occupational deafness.
39-71-808. Compensation for occupational deafness.
39-71-809. Liability of employer for occupational deafness.
39-71-810. Employee to have worked ninety days for employer from whom compensation claimed.
39-71-811. Minimum exposure and noise intensity level required.
39-71-812. Limitation on amount of compensation payable to employee under part.
39-71-813. Limitation provisions applicable — when provisions begin to run.

Part 9 — Subsequent Injury Received by Vocationally Handicapped

39-71-901. Definitions.
39-71-902. Fund to receive payment from insurer for each death under chapter — assessment of insurers.
39-71-903. Procedure and practice.
39-71-904. Rules for certification.
39-71-905. Certification as vocationally handicapped.
39-71-906. Employer hiring or retaining certified vocationally handicapped person to file information with division — effect of failure to file.
39-71-907. Certified vocationally handicapped person to be compensated for injury as provided by chapter — employer liability for compensation limited.

39-71-908. Notification of fund of its potential liability under part — review by fund.
39-71-909. Effect of fund's failure to give notification of its intent to dispute liability — subsequent notification by fund authorized.
39-71-910. Procedure for resolving disputes as to liability under part.
39-71-911. Obligation to make payments on behalf of fund not an independent liability.
39-71-912. Reimbursement to be promptly made.
39-71-913. Payments by fund directly to persons entitled.
39-71-914. Conversion of benefits payable from fund to lump sum.

Part 10 — Referral of Disabled Workers for Vocational Rehabilitation

39-71-1001. Referral of disabled workers to department of social and rehabilitation services for vocational rehabilitation.
39-71-1002. Certification of department's determination to division — review of award.
39-71-1003. Eligibility for benefits under chapter not affected — other expenses payable.
39-71-1004. Industrial accident rehabilitation account.
39-71-1005. Required rehabilitation.

Parts 11 through 20 reserved

Part 21 — Compensation Plan Number One

39-71-2101. General requirements for electing coverage under plan.
39-71-2102. Proof of solvency to be filed.
39-71-2103. Employer permitted to carry on business and settle directly with employee — individual liability.
39-71-2104. Renewal of application.
39-71-2105. Additional proof of solvency — revocation of order.
39-71-2106. Requiring security of employer.
39-71-2107. When employer to make deposit or security to guarantee payment of compensation.
39-71-2108. Failure of employer to pay compensation — duty of division.
39-71-2109. When employer may be relieved from liability.

Part 22 — Compensation Plan Number Two

39-71-2201. Election to be bound by plan.
39-71-2202. Policies made subject to chapter.
39-71-2203. Content of policies — policies subject to approval, change, or revision by division.
39-71-2204. Insurer to submit notice of coverage within thirty days — penalty for failure.
39-71-2205. Policy remains in effect until canceled or replaced — twenty-day notification of cancellation required.
39-71-2206. Deposits by insurer with division to guarantee payment of liability.
39-71-2207. How insurer relieved from liability.

Part 23 — Compensation Plan Number Three

39-71-2301. Intent and purpose of plan.
39-71-2302. General requirements for electing coverage under plan.
39-71-2303. Manner of electing — contract or policy of insurance — payment of premium.
39-71-2304. Determination of rates and classifications by division.
39-71-2305. Advanced rate for dangerous places of employment.
39-71-2306. State fund authorized to charge interest.
39-71-2307. Cancellation of coverage under plan for default — thirty days' notice required.
39-71-2308. Collection in case of default.
39-71-2309. Repealed.
39-71-2310. Repealed.
39-71-2311 through 39-71-2320 reserved.
39-71-2321. What to be deposited in industrial insurance expendable trust fund.
39-71-2322. Money in industrial insurance fund held in trust — disposition of funds upon repeal of chapter.
39-71-2323. Surplus in industrial insurance expendable trust fund — payment of dividends.

39-71-2324. Investment of reserve — payment of installments.
39-71-2325. Division to keep accounts of segregations.
39-71-2326. Disbursements out of industrial insurance expendable trust fund — employer to pay warrant if funds insufficient.
39-71-2327. Earnings of industrial insurance expendable trust fund to be credited to fund — improper use a felony.

Parts 24 through 28 reserved

Part 29 — Workers' Compensation Judge

39-71-2901. Location of office.
39-71-2902. Operating expenses.
39-71-2903. Administrative procedure act applicable — judge not bound by rules of evidence.
39-71-2904. Direct appeal to supreme court.
39-71-2905. Petition to workers' compensation judge.
39-71-2906. Nominal disability awards.
39-71-2907. Increase in award for unreasonable delay or refusal to pay.
39-71-2908. Review of orders allowing compromise settlements of claims.
39-71-2909. Authority to review, diminish, or increase awards — limitation.

Chapter Cross-References

The administration of justice, Art. II, sec. 16, Mont. Const.

Part 1

General Provisions

39-71-101. Short title. This chapter may be cited as the "Workers' Compensation Act".

History: En. Sec. 1, Ch. 96, L. 1915; re-en. Sec. 2816, R.C.M. 1921; re-en. Sec. 2816, R.C.M. 1935; amd. Sec. 29, Ch. 341, L. 1969; amd. Sec. 86, Ch. 23, L. 1975; R.C.M. 1947, 92-101(part); amd. Sec. 51, Ch. 397, L. 1979.

39-71-102. Reference to plans. Whenever compensation plan No. 1, 2, or 3 is referred to, such reference also includes all other sections which are applicable to the subject matter of such reference.

History: En. Sec. 1, Ch. 96, L. 1915; re-en. Sec. 2817, R.C.M. 1921; re-en. Sec. 2817, R.C.M. 1935; R.C.M. 1947, 92-102; amd. Sec. 52, Ch. 397, L. 1979.

Cross-References

Compensation plan No. 1, Title 39, ch. 71, part 21.

Compensation plan No. 2, Title 39, ch. 71, part 22.

Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-103. Compensation provisions. The compensation provisions of this chapter, whenever referred to, shall be held to include the provisions of compensation plan No. 1, 2, or 3 and all other sections of this chapter applicable to the same or any part thereof.

History: En. Sec. 1, Ch. 96, L. 1915; re-en. Sec. 2818, R.C.M. 1921; re-en. Sec. 2818, R.C.M. 1935; R.C.M. 1947, 92-103.

Cross-References

Compensation plan No. 1, Title 39, ch. 71, part 21.

Compensation plan No. 2, Title 39, ch. 71, part 22.

Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-104. Court to give liberal construction to chapter. Whenever this chapter or any part or section thereof is interpreted by a court, it shall be liberally construed by such court.

History: En. Sec. 24, Ch. 96, L. 1915; re-en. Sec. 2964, R.C.M. 1921; re-en. Sec. 2964, R.C.M. 1935; R.C.M. 1947, 92-838.

39-71-105 through 39-71-115 reserved.

39-71-116. Definitions. Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the division of workers' compensation prior to July 1 of each year.

(2) "Beneficiary" means:

(a) a surviving wife or husband;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 25 years who is a full-time student in an accredited school;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections (2)(a) through (2)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury (however, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections (2)(a) through (2)(e) of this section, exists).

(3) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer. Any person hauling or assisting in hauling of sugar beets or grains, in case of emergency, is considered engaged in casual employment.

(4) "Child" includes a posthumous child, a dependent stepchild, a child legally adopted prior to the injury, and an illegitimate child legitimized prior to the injury.

(5) "Division" means the division of workers' compensation of the department of labor and industry provided for in 2-15-1702.

(6) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(7) "Husband" or "widower" means only a husband or widower living with or legally entitled to be supported by the deceased at the time of her injury.

(8) "Insurer" means an employer bound by compensation plan No. 1, an nsurance company transacting business under compensation plan No. 2, the ndustrial insurance account under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

(9) "Invalid" means one who is physically or mentally incapacitated.

(10) "Order" means any decision, rule, direction, requirement, or standard of the division or any other determination arrived at or decision made by the division.

(11) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year; provided, that an estimate may be made by the division for any employer starting in business where no average payrolls are available, such estimate to be adjusted by additional payment by the employer or refund by the division, as the case may actually be on December 31 of such current year.

(12) "Permanent partial disability" means a condition resulting from injury as defined in this chapter that results in the actual loss of earnings or earning capability less than total that exists after the injured worker is as far restored as the permanent character of the injuries will permit. Disability shall be supported by a preponderance of medical evidence.

(13) "Permanent total disability" means a condition resulting from injury as defined in this chapter that results in the loss of actual earnings or earning capability that exists after the injured worker is as far restored as the permanent character of the injuries will permit and which results in the worker having no reasonable prospect of finding regular employment of any kind in the normal labor market. Disability shall be supported by a preponderance of medical evidence.

(14) The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.

(15) "The plant of the employer" includes the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

(16) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

(17) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(18) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

(19) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker is as far restored as the permanent character of the injuries will permit. A worker shall be paid temporary total disability benefits during a reasonable period of retraining. Disability shall be supported by a preponderance of medical evidence.

(20) "Wages" means the average gross earnings received by the employee at the time of the injury for the usual hours of employment in a week, and overtime is not to be considered. Sick leave benefits accrued by employees of public corporations, as defined by subsection (16) of this section, are considered wages.

(21) "Wife" or "widow" means only a wife or widow living with or legally entitled to be supported by the deceased at the time of the injury.

(22) "Year", unless otherwise specified, means calendar year.

History: Ap. p. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2853, R.C.M. 1921; re-en. Sec. 2853, R.C.M. 1935; Sec. 92-401, R.C.M. 1947; (1)En. 92-423.2 by Sec. 1, Ch. 445, L. 1973; Sec.

92-423.2, R.C.M. 1947; (2)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2865, R.C.M. 1921; amd. Sec. 4, Ch. 121, L. 1925; re-en. Sec. 2865, R.C.M. 1935; amd. Sec. 1, Ch. 92, L. 1969; amd. Sec. 1, Ch. 331, L. 1973; amd. Sec. 1, Ch. 269, L. 1974; amd. Sec. 1, Ch. 46, L. 1975; Sec. 92-413, R.C.M. 1947; (3)Ap. p. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2888, R.C.M. 1921; re-en. Sec. 2888, R.C.M. 1935; Sec. 92-436, R.C.M. 1947; Ap. p. Sec. 12, Ch. 235, L. 1947; Sec. 92-1121.1, R.C.M. 1947; (4)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2869, R.C.M. 1921; re-en. Sec. 2869, R.C.M. 1935; amd. Sec. 2, Ch. 92, L. 1969; Sec. 92-417, R.C.M. 1947; (5)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2878, R.C.M. 1921; re-en. Sec. 2878, R.C.M. 1935; amd. Sec. 7, Ch. 23, L. 1975; Sec. 92-426, R.C.M. 1947; (6), (22)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2885, R.C.M. 1921; re-en. Sec. 2885, R.C.M. 1935; Sec. 92-433, R.C.M. 1947; (7)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2877, R.C.M. 1921; re-en. Sec. 2877, R.C.M. 1935; amd. Sec. 1, Ch. 33, L. 1974; Sec. 92-425, R.C.M. 1947; (8)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2887, R.C.M. 1921; re-en. Sec. 2887, R.C.M. 1935; amd. Sec. 7, Ch. 550, L. 1977; Sec. 92-435, R.C.M. 1947; (9)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2868, R.C.M. 1921; re-en. Sec. 2868, R.C.M. 1935; Sec. 92-416, R.C.M. 1947; (10)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2881, R.C.M. 1921; re-en. Sec. 2881, R.C.M. 1935; amd. Sec. 8, Ch. 23, L. 1975; Sec. 92-429, R.C.M. 1947; (11)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2884, R.C.M. 1921; re-en. Sec. 2884, R.C.M. 1935; amd. Sec. 9, Ch. 23, L. 1975; Sec. 92-432, R.C.M. 1947; (12)En. 92-440 by Sec. 1, Ch. 108, L. 1973; Sec. 92-440, R.C.M. 1947; (13)En. 92-441 by Sec. 1, Ch. 109, L. 1973; Sec. 92-441, R.C.M. 1947; (14)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2873, R.C.M. 1921; re-en. Sec. 2873, R.C.M. 1935; Sec. 92-421, R.C.M. 1947; (15)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2889, R.C.M. 1921; re-en. Sec. 2889, R.C.M. 1935; Sec. 92-437, R.C.M. 1947; (16)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2886, R.C.M. 1921; re-en. Sec. 2886, R.C.M,. 1935; Sec. 92-434, R.C.M. 1947; (17)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2860, R.C.M. 1921; re-en. Sec. 2860, R.C.M. 1935; Sec. 92-408, R.C.M. 1947; (18)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2861, R.C.M. 1921; re-en. Sec. 2861, R.C.M. 1935; Sec. 92-409, R.C.M. 1947; (19)En. 92-439 by Sec. 1, Ch. 107, L. 1973; Sec. 92-439, R.C.M. 1947; (20)En. 92-423.1 by Sec. 1, Ch. 444, L. 1973; Sec. 92-423.1, R.C.M. 1947; (21)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2876, R.C.M. 1921; re-en. Sec. 2876, R.C.M. 1935; Sec. 92-424, R.C.M. 1947; R.C.M. 1947, 92-401, 92-408, 92-409, 92-413, 92-416, 92-417, 92-421, 92-423.1, 92-423.2, 92-424, 92-425, 92-426, 92-429, 92-432, 92-433, 92-434, 92-435, 92-436, 92-437, 92-439, 92-440, 92-441, 92-1121.1(part); amd. Sec. 53, Ch. 397, L. 1979; amd. Sec. 1, Ch. 47, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 374, L. 1985.

Compiler's Comments

1985 Amendment: In (19) inserted second sentence.

1981 Amendments: Chapter 47 inserted "Disability shall be supported by a preponderance of medical evidence" in (12), (13), and (19).

Chapter 349 deleted "the division of employment security of" before "the Montana department of labor and industry" in (1).

39-71-117. Employer defined. "Employer" means:

(1) the state and each county, city and county, city school district, irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor, and every firm, voluntary association, and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee thereof; and

(2) any association, corporation, or organization that seeks permission and meets the requirements set by the division by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter.

History: En. 92-410.1 by Sec. 1, Ch. 154, L. 1973; R.C.M. 1947, 92-410.1(part); amd. Sec. 1, Ch. 480, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (2).

39-71-118. Employee, worker, and workman defined. (1) The terms "employee", "workman", or "worker" mean:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay. Casual employees as defined by 39-71-116(3) are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) a recipient of general relief who is performing work for a county of this state under the provisions of 53-3-303 through 53-3-305 and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined above while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education approved by the state board of public education at designated postsecondary vocational-technical centers; or

(e) an airman or other person employed as a volunteer under 67-2-105.

(2) If the employer is a partnership or sole proprietorship, such employer may elect to include as an employee within the provisions of this chapter any member of such partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business. In the event of such election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered, and no partner or sole proprietor shall be deemed an employee within this chapter until such notice has been given. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the insurance carrier shall assume a salary or wage of such electing employee to be not less than $900 a month and not more than 1 ½ times the average weekly wage as defined in this chapter.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2863, R.C.M. 1921; amd. Sec. 3, Ch. 121, L. 1925; amd. Sec. 1, Ch. 139, L. 1931; re-en. Sec. 2863, R.C.M. 1935; amd. Sec. 3, Ch. 88, L. 1945; amd. Sec. 1, Ch. 153, L. 1963; amd. Sec. 1, Ch. 308, L. 1971; amd. Sec. 1, Ch. 44, L. 1975; amd. Sec. 1, Ch. 281, L. 1977; R.C.M. 1947, 92-411; amd. Sec. 1, Ch. 21, L. 1981; amd. Sec. 2, Ch. 336, L. 1985; amd. Sec. 20, Ch. 670, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 336 inserted (1)(e).

Chapter 670 in (1)(b) substituted "53-3-303" for "53-3-302".

1981 Amendment: Substituted "not less than $900 a month and not more than 1 ½ times the average weekly wage as defined in this chapter" for "$900 per month" in (2).

Cross-References

"Independent contractor" defined, 39-71-120.

39-71-119. Injury or injured defined. "Injury" or "injured" means:

(1) a tangible happening of a traumatic nature from an unexpected cause or unusual strain resulting in either external or internal physical harm and such physical condition as a result therefrom and excluding disease not traceable to injury, except as provided in subsection (2) of this section;

(2) cardiovascular or pulmonary or respiratory diseases contracted by a paid firefighter employed by a municipality, village, or fire district as a regular member of a lawfully established fire department, which diseases are caused by overexertion in times of stress or danger in the course of his employment by proximate exposure or by cumulative exposure over a period of 4 years or more to heat, smoke, chemical fumes, or other toxic gases. Nothing herein shall be construed to exclude any other working person who suffers a cardiovascular, pulmonary, or respiratory disease while in the course and scope of his employment.

(3) death resulting from injury.

History: Ap. p. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2870, R.C.M. 1921; re-en. Sec. 2870, R.C.M. 1935; amd. Sec. 6, Ch. 162, L. 1961; amd. Sec. 6, Ch. 149, L. 1965; amd. Sec. 1, Ch. 270, L. 1967; amd. Sec. 1, Ch. 488, L. 1973; Sec. 92-418, R.C.M. 1947; Ap. p. Sec. 2, Ch. 488, L. 1973; Sec. 92-418.1, R.C.M. 1947; (3)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2864, R.C.M. 1921; re-en. Sec. 2864, R.C.M. 1935; Sec. 92-412, R.C.M. 1947; R.C.M. 1947, 92-412, 92-418, 92-418.1.

39-71-120. Independent contractor defined. An "independent contractor" is one who renders service in the course of an occupation and:

(1) has been and will continue to be free from control or direction over the performance of the services, both under his contract and in fact; and

(2) is engaged in an independently established trade, occupation, profession, or business.

Sharp 584 P2d 1298 (1978)

History: En. 92-438.1 by Sec. 1, Ch. 251, L. 1973; R.C.M. 1947, 92-438.1. 4 pt test

39-71-121. Disability defined. A worker is disabled when his ability to engage in gainful employment is diminished as a result of impairment, which in turn may be combined with such factors as the worker's physical condition, age, education, work history, and other factors affecting the worker's ability to engage in gainful employment. Disability is not a purely medical condition. Disability may be temporary total, permanent total, or permanent partial as defined in 39-71-116.

History: En. Sec. 2, Ch. 47, L. 1981.

39-71-122. Impairment defined. Impairment means any anatomic or functional abnormality or loss of bodily function. Impairment refers to functional use of the body and is a purely medical condition. Permanent impairment is any anatomic or functional abnormality or loss of bodily function after the maximum medical rehabilitation has been achieved. The anatomic or functional abnormality or loss must be considered stable by the physician at the time the impairment rating evaluation is made. An impairment rating is purely a medical determination. Impairment may or may not result in disability.

History: En. Sec. 3, Ch. 47, L. 1981.

Part 2

Administrative Provisions
Division of Workers' Compensation

39-71-201. Administration fund. (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the various occupational safety acts the division must administer are to be paid upon lawful appropriation. The following moneys collected by the division shall be deposited in the state treasury to the credit of the workers' compensation administrative fund and shall be used for the administrative expenses of the division:

(a) all fees and fines provided in 39-71-205 and 39-71-304;

(b) all fees paid for inspection of boilers and issuance of licenses to operating engineers as required by law;

(c) all fees paid from an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state insurance fund. The assessments shall be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the chapter, during the preceding calendar year. However, no assessment of the plan No. 1 employer or plan No. 2 insurer shall be less than $200. The assessments shall be sufficient to fund the direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans using proper accounting and cost allocation procedures. Plan No. 3 shall be assessed an amount sufficient to fund its direct costs and an equitable portion of the indirect costs as referred to above. Other sources of revenue, including unexpended funds from the preceding fiscal year, shall be used to reduce the costs before levying the assessments.

(2) The administration fund shall be debited with expenses incurred by the division in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the division either within or without the state.

(3) Disbursements from the administration money shall be made after being approved by the division upon claim therefor.

History: En. 92-116.1 by Sec. 1, Ch. 253, L. 1973; amd. Sec. 1, Ch. 318, L. 1975; amd. Sec. 28, Ch. 453, L. 1977; R.C.M. 1947, 92-116.1; amd. Sec. 18, Ch. 104, L. 1979.

Cross-References
"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Payroll" defined, 39-71-116.
"Year" defined, 39-71-116.
"Employer" defined, 39-71-117.
Compensation plan No. 1, Title 39, ch. 71, part 21.
Compensation plan No. 2, Title 39, ch. 71, part 22.
Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-202. Office of division. The division shall keep its principal office in the capital of the state. It may rent or lease quarters for the conduct of its administrative duties.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2826, R.C.M. 1921; re-en. Sec. 2826, R.C.M. 1935; amd. Sec. 1, Ch. 234, L. 1969; amd. Sec. 1, Ch. 23, L. 1975; R.C.M. 1947, 92-111.

Cross-References
"Division" defined, 39-71-116.

39-71-203. Powers of division. The division is hereby vested with full power, authority, and jurisdiction to do and perform any and all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this chapter.

History: En. Sec. 18, Ch. 96, L. 1915; re-en. Sec. 2940, R.C.M. 1921; re-en. Sec. 2940, R.C.M. 1935; amd. Sec. 26, Ch. 23, L. 1975; R.C.M. 1947, 92-814.

Cross-References
Adoption and publication of rules, Title 2, ch. 4, part 3.
"Division" defined, 39-71-116.

39-71-204. Rescission, alteration, or amendment by division of its orders, decisions, or awards — limitation — effect. (1) Except as provided in subsection (2), the division shall have continuing jurisdiction over all its orders, decisions, and awards and may, at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter, or amend any such order, decision, or award made by it upon good cause appearing therefor.

(2) The division or the workers' compensation judge shall not have power to rescind, alter, or amend any final settlement or award of compensation more than 4 years after the same has been approved by the division. Rescinding, altering, or amending a final settlement within the 4-year period shall be by agreement between the claimant and the insurer. If the claimant and the insurer cannot agree, the dispute shall be considered a dispute for which the workers' compensation judge has jurisdiction to make a determination. Except as provided in 39-71-2908, the division or the workers' compensation judge shall not have the power to rescind, alter, or amend any order approving a full and final compromise settlement of compensation.

(3) Any order, decision, or award rescinding, altering, or amending a prior order, decision, or award shall have the same effect as original orders or awards.

History: En. Sec. 20, Ch. 96, L. 1915; re-en. Sec. 2952, R.C.M. 1921; amd. Sec. 9, Ch. 177, L. 1929; re-en. Sec. 2952, R.C.M. 1935; amd. Sec. 1, Ch. 67, L. 1937; amd. Sec. 40, Ch. 23, L. 1975; R.C.M. 1947, 92-826; amd. Sec. 1, Ch. 63, L. 1979.

Cross-References
"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Order" defined, 39-71-116.

39-71-205. Division authorized to charge certain fees — disposition of. (1) The division shall have power and authority to charge and collect a fee for copies of papers and records, including certified copies of documents and orders filed in its office, sufficient to recover the cost of the material and the time expended, as fixed by the administrator.

(2) The division shall have power and authority to fix and collect reasonable charges for publications issued under its authority.

(3) The fees charged and collected under this section shall be paid monthly into the treasury of the state to the credit of the state special revenue fund and shall be accompanied by detailed statement thereof.

History: **En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2834, R.C.M. 1921; re-en. Sec. 2834, R.C.M. 1935; amd. Sec. 165, Ch. 147, L. 1963; amd. Sec. 4, Ch. 23, L. 1975; R.C.M. 1947, 92-119; amd. Sec. 2, Ch. 21, L. 1981; amd. Sec. 1, Ch. 277, L. 1983.**

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

1981 Amendment: Rewrote (1) to provide for a fee to cover costs rather than 15 cents per folio for noncertified documents and 20 cents per folio for certified documents.

Cross-References

"Folio" defined, 1-1-203.

"Division" defined, 39-71-116.

39-71-206. Legal advisers of division. (1) The attorney general shall be the legal adviser of the division and shall represent it in all proceedings whenever so requested by the division or any member thereof.

(2) The division may, in the investigation and defense of cases under plan No. 3 of the Workers' Compensation Act, employ such other attorney or legal adviser as it deems necessary and pay for the same out of the industrial insurance account in the expendable trust fund.

History: **En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2835, R.C.M. 1921; re-en. Sec. 2835, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1937; amd. Sec. 174, Ch. 147, L. 1963; amd. Sec. 5, Ch. 23, L. 1975; R.C.M. 1947, 92-120; amd. Sec. 1, Ch. 283, L. 1983.**

Compiler's Comments

1983 Amendment: At end of section, substituted "expendable trust fund" for "agency fund".

Cross-References

"Division" defined, 39-71-116.

Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-207. Merit system. Employees of the division, except the administrator, are included within the joint merit system if such inclusion is required for the receipt of federal funds by 29 CFR 1902.3(h) or by any other federal law or regulation.

History: **En. 92-121 by Sec. 1, Ch. 332, L. 1973; R.C.M. 1947, 92-121.**

Cross-References

"Division" defined, 39-71-116.

39-71-208. Blank forms, minutes, and records. The division shall cause to be printed such blank forms as it considers necessary to facilitate or promote the efficient administration of this chapter. It shall provide a record of all awards made by the division and such other books or records as it considers necessary for the purpose and efficient administration of this chapter. All such records are to be kept in the office of the division.

History: **En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2832, R.C.M. 1921; re-en. Sec. 2832, R.C.M. 1935; amd. Sec. 2, Ch. 23, L. 1975; R.C.M. 1947, 92-117; amd. Sec. 1, Ch. 103, L. 1979.**

Cross-References

"Division" defined, 39-71-116.

39-71-209. Publication of reports and bulletins authorized. The division shall have the power and authority to publish and distribute at its discretion from time to time such further reports and bulletins covering its operations, proceedings, and matters relative to its work as it may deem advisable.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2833, R.C.M. 1921; re-en. Sec. 2833, R.C.M. 1935; amd. Sec. 41, Ch. 93, L. 1969; amd. Sec. 3, Ch. 23, L. 1975; R.C.M. 1947, 92-118; amd. Sec. 12, Ch. 125, L. 1983.

Compiler's Comments

1983 Amendment: Near middle of section, before "such further reports" deleted "in addition to its report required by 2-7-102".

Cross-References

"Division" defined, 39-71-116.

39-71-210. Annual report of division — copies for general distribution. The division shall, after the end of each fiscal year, make a report to the governor covering its entire operations and proceedings for the fiscal year, with such suggestions or recommendations as it may deem of value for public information. A reasonable number of copies of the report shall be printed for general distribution.

History: En. Sec. 25, Ch. 96, L. 1915; re-en. Sec. 2968, R.C.M. 1921; re-en. Sec. 2968, R.C.M. 1935; amd. Sec. 50, Ch. 23, L. 1975; R.C.M. 1947, 92-842; amd. Sec. 2, Ch. 103, L. 1979.

Cross-References

Executive branch reports and audits, Title 2, ch. 7.

"Division" defined, 39-71-116.

39-71-211 through 39-71-220 reserved.

39-71-221. Public records of division — right to inspect. Each person has a right to inspect any public record of the division, except as otherwise expressly provided by law. For the purposes of 39-71-221 through 39-71-224, "public record" means any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by a public body regardless of physical form or characteristics.

History: En. 92-844 by Sec. 1, Ch. 25, L. 1975; R.C.M. 1947, 92-844.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public participation in governmental operations, Title 2, ch. 3.

"Division" defined, 39-71-116.

39-71-222. Duties of administrator regarding inspection and examination of records. The administrator of the division shall furnish proper and reasonable opportunities for inspection and examination of the records under his control and reasonable facilities for making memoranda or abstracts therefrom during the usual business hours to all persons having occasion to examine them. The administrator may make reasonable rules necessary for the protection of the records and necessary to prevent interference with the regular discharge of his duties.

History: En. 92-845 by Sec. 2, Ch. 25, L. 1975; R.C.M. 1947, 92-845.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public participation in governmental operations, Title 2, ch. 3.

Adoption and publication of rules, Title 2, ch. 4, part 3.

"Division" defined, 39-71-116.

39-71-223. Certified copies of public records — fees. (1) The administrator of the division shall, on demand, furnish a certified copy of any public record to a person who has a right to inspect it, if the record is of a nature permitting such copying, or shall furnish reasonable opportunity to inspect or copy.

(2) The administrator of the division may establish fees reasonably calculated to reimburse the division for its actual cost in making such records available.

History: **En. 92-846 by Sec. 3, Ch. 25, L. 1975; R.C.M. 1947, 92-846.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public participation in governmental operations, Title 2, ch. 3.

Adoption and publication of rules, Title 2, ch. 4, part 3.

"Division" defined, 39-71-116.

39-71-224. Records exempt from disclosure — separation of exempt material from nonexempt. (1) In assuring that the right of individual privacy so essential to the well-being of a free society shall not be infringed without the showing of a compelling state interest, the following public records of the division are exempt from disclosure:

(a) information of a personal nature such as personal, medical, or similar information if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

(b) any public records or information, the disclosure of which is prohibited by federal law or regulations.

(2) If any public record of the division contains material which is not exempt under subsection (1) of this section, as well as material which is exempt from disclosure, the administrator of the division shall separate the exempt and nonexempt and make the nonexempt material available for examination.

History: **En. 92-847 by Sec. 4, Ch. 25, L. 1975; R.C.M. 1947, 92-847.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

"Division" defined, 39-71-116.

Part 3

Miscellaneous Provisions

39-71-301. Certificates and certified copies as evidence. (1) Copies of official documents and orders filed or deposited according to law in the office of the division, certified to by a member of the division or by the secretary under the official seal of the division to be true copies of the original, shall be evidence in like manner as the originals.

(2) In any court proceeding wherein the question as to whether or not an employer or employee has complied with and is operating under or bound by the provisions of the Workers' Compensation Act of the state of Montana is a question for determination, a certificate by a member of the division, or by the secretary under the official seal of the division, certifying that such employer or employee has or has not complied with and is or is not operating under and is or is not bound by the provisions of the Workers' Compensation Act of the state of Montana shall be prima facie evidence thereof.

History: **En. Sec. 18, Ch. 96, L. 1915; re-en. Sec. 2944, R.C.M. 1921; amd. Sec. 8, Ch. 177, L. 1929; re-en. Sec. 2944, R.C.M. 1935; amd. Sec. 31, Ch. 23, L. 1975; R.C.M. 1947, 92-818.**

Cross-References

Requirement of original, Rule 1002, Montana Rules of Evidence (see Title 26, ch. 10).

Public records, Rule 1005, Montana Rules of Evidence (see Title 26, ch. 10).

"Division" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

39-71-302. What included in computing payroll. In computing the payroll, the entire compensation received by every worker employed under this chapter is included, whether in the form of salary, wage, piecework, or otherwise and whether payable in money, board, or otherwise.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3009, R.C.M. 1921; re-en. Sec. 3009, R.C.M. 1935; amd. Sec. 11, Ch. 235, L. 1947; amd. Sec. 1, Ch. 146, L. 1971; amd. Sec. 5, Ch. 443, L. 1973; R.C.M. 1947, 92-1121; amd. Sec. 54, Ch. 397, L. 1979.

Cross-References

"Payroll" defined, 39-71-116.

"Worker" defined, 39-71-118.

39-71-303. Work paid for in property other than money — wages to be determined by division. Where any employer procures any work to be done, payment for which is to be made in property other than money or its equivalent and the value of which property is speculative or intangible, the wages of the employees receiving such compensation shall be determined by the division in accordance with the going wage for the same or similar work in the district or locality where the same is to be performed.

History: En. Sec. 11, Ch. 96, L. 1915; re-en. Sec. 2904, R.C.M. 1921; re-en. Sec. 2904, R.C.M. 1935; amd. Sec. 14, Ch. 23, L. 1975; R.C.M. 1947, 92-607(part).

Cross-References

"Division" defined, 39-71-116.

"Wages" defined, 39-71-116.

"Employer" defined, 39-71-117.

39-71-304. Books, records, and payrolls to be open to inspection — penalty for refusal. The books, records, and payrolls of an employer pertinent to the administration of this chapter must always be open to inspection by the division or any duly authorized employee thereof for the purpose of ascertaining the correctness of the payroll, the number of workers employed, and such other information as may be necessary for the division and its management under this chapter. Refusal on the part of an employer to submit the books, records, and payrolls for such inspection shall subject the offending employer to a penalty not exceeding $500 for each offense, to be collected through a civil action in the name of the state and paid into the state treasury.

History: En. Sec. 19, Ch. 96, L. 1915; re-en. Sec. 2946, R.C.M. 1921; re-en. Sec. 2946, R.C.M. 1935; amd. Sec. 166, Ch. 147, L. 1963; amd. Sec. 33, Ch. 23, L. 1975; R.C.M. 1947, 92-820; amd. Sec. 3, Ch. 103, L. 1979; amd. Sec. 55, Ch. 397, L. 1979.

Compiler's Comments

Composite section. This section was amended by Ch. 103 and Ch. 397, L. 1979, and a composite was prepared by the Code Commissioner, 1979. Ch. 397 was a Code Commissioner bill and was not intended to make substantive changes in the law. Consequently a conflict of language between Ch. 103 and Ch. 397 has been resolved in favor of the language used in Ch. 103.

Cross-References

"Division" defined, 39-71-116.

"Payroll" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

39-71-305. Repealed. Sec. 16, Ch. 103, L. 1979.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2930, R.C.M. 1921; re-en. Sec. 2930, R.C.M. 1935; amd. Sec. 20, Ch. 23, L. 1975; R.C.M. 1947, 92-804.

39-71-306. Plan one employers and plan two insurers to file duplicate receipts paid for injuries and statements of medical expenditures. Every employer coming under the provisions of compensation plan No. 1 and every insurer coming under the provisions of compensation plan No. 2 shall, on or before the 15th day of each and every month, file with the division:

(1) duplicate receipts for all payments made during the previous month to injured workers or their beneficiaries or dependents; and

(2) statements showing the amounts expended during the previous month for medical, surgical, and hospital services for injured workers and for the burial of deceased workers.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2932, R.C.M. 1921; re-en. Sec. 2932, R.C.M. 1935; amd. Sec. 21, Ch. 23, L. 1975; R.C.M. 1947, 92-806; amd. Sec. 56, Ch. 397, L. 1979.

Cross-References

"Division" defined, 39-71-116.

"Insurer" defined, 39-71-116.

"Employer" defined, 39-71-117.

Compensation plan No. 1, Title 39, ch. 71, part 21.

Compensation plan No. 2, Title 39, ch. 71, part 22.

39-71-307. Employers and insurers to file reports of accidents. (1) Every employer of labor and every insurer is hereby required to file with the division, under such rules as the division may from time to time make, a full and complete report of every accident to an employee arising out of or in the course of his employment and resulting in loss of life or injury to such person. Such reports shall be furnished to the division in such form and such detail as the division shall from time to time prescribe and shall make specific answers to all questions required by the division under its rules; except, in case he is unable to answer any such questions, a good and sufficient reason shall be given for such failure.

(2) Every insurance company transacting business under this chapter shall, at the time and in the manner prescribed by the division, make and file with the division such reports of accidents as the division may require.

History: (1)En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2934, R.C.M. 1921; re-en. Sec. 2934, R.C.M. 1935; amd. Sec. 22, Ch. 23, L. 1975; Sec. 92-808, R.C.M. 1947; (2)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2987, R.C.M. 1921; re-en. Sec. 2987, R.C.M. 1935; amd. Sec. 64, Ch. 23, L. 1975; Sec. 92-1010, R.C.M. 1947; R.C.M. 1947, 92-808, 92-1010.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

"Division" defined, 39-71-116.

"Insurer" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

"Injury" defined, 39-71-119.

39-71-308. Neglect or refusal of public corporation to file payroll reports — arbitrary assessment by division. Whenever any public corporation insured by the state compensation insurance fund neglects or refuses to file prescribed payroll reports of its employees, the division may levy an arbitrary assessment upon such public corporation in an amount of $75 for each such assessment, which assessments shall be collected in the manner provided in this chapter for the collection of assessments.

History: En. Sec. 3, Ch. 96, L. 1915; amd. Sec. 1, Ch. 100, L. 1919; amd. Sec. 1, Ch. 196, L. 1921; re-en. Sec. 2840, R.C.M. 1921; re-en. Sec. 2840, R.C.M. 1935; amd. Sec. 1, Ch. 410, L. 1971; amd. Sec. 6, Ch. 23, L. 1975; R.C.M. 1947, 92-206(part); amd. Sec. 3, Ch. 21, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "insured by the state compensation insurance fund"; substituted "file prescribed payroll reports" for "file with the division monthly payroll report"; and increased the assessment amount from $25 to $75.

Cross-References

"Division" defined, 39-71-116.

"Payroll" defined, 39-71-116.

"Public corporation" defined, 39-71-116.

39-71-309. Hospitals to submit schedule of fees and charges — effective period of schedule — when to be submitted. All hospitals must submit to the division a schedule of fees and charges for treatment of injured workers to be in effect for at least a 12-month period unless the division and the hospital agree to interim amendments of the schedule. The schedule must be submitted at least 30 days prior to its effective date and may not exceed the charges prevailing in the hospital for similar treatment of private patients.

History: En. 92-706.1 by Sec. 1, Ch. 252, L. 1973; amd. Sec. 1, Ch. 43, L. 1975; amd. Sec. 1, Ch. 189, L. 1975; R.C.M. 1947, 92-706.1(2); amd. Sec. 57, Ch. 397, L. 1979.

Cross-References

"Division" defined, 39-71-116.

Part 4

Coverage, Liability, and Subrogation

39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2) of this section, the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116(3) except employment of a volunteer under 67-2-105;

(c) employment of members of an employer's family dwelling in the employer's household;

(d) employment of sole proprietors or working members of a partnership other than those who consider themselves or hold themselves out as independent contractors and who are not contracting for agricultural services to be performed on a farm or ranch, or for broker or salesman services performed under a license issued by the board of realty regulation, or for services as a direct seller engaged in the sale of consumer products to customers primarily in the home;

(e) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(f) any person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(g) employment with any railroad engaged in interstate commerce, except that railroad construction work shall be included in and subject to the provisions of this chapter;

(h) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district.

(3) A sole proprietor or working member of a partnership who holds himself out or considers himself an independent contractor and who is not contracting for agricultural services to be performed on a farm or ranch, or for broker or salesman services performed under a license issued by the board of realty regulation, or for services as a direct seller engaged in the sale of consumer products to customers primarily in the home must elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3, but he may apply to the division for an exemption from the Workers' Compensation Act for himself. The application must be made in accordance with the rules adopted by the division. The division may deny the application only if it determines that the applicant is not an independent contractor. When an application is approved by the division, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(4) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over such place of business or property for the purpose of carrying on his usual trade, business, or occupation. The sign will be provided by the division, distributed through insurers or directly by the division, and posted by employers in accordance with rules adopted by the division. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation.

History: (1), (2)(a) thru (f)En. 92-202.1 by Sec. 1, Ch. 492, L. 1973; amd. Sec. 1, Ch. 550, L. 1977; Sec. 92-202.1, R.C.M. 1947; (2)(g)En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2931, R.C.M. 1921; re-en. Sec. 2931, R.C.M. 1935; Sec. 92-805, R.C.M. 1947; R.C.M. 1947, 92-202.1, 92-805; amd. Sec. 58, Ch. 397, L. 1979; amd. Sec. 1, Ch. 470, L. 1983; amd. Sec. 1, Ch. 94, L. 1985; amd. Sec. 1, Ch. 100, L. 1985; amd. Sec. 3, Ch. 336, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 94 at end of (2)(d) and in first sentence of (3), inserted "or for services as a direct seller engaged in the sale of consumer products to customers primarily in the home".

Chapter 100 inserted (2)(h).

Chapter 336 at end of (2)(b) and (2)(f) inserted "except employment of a volunteer under 67-2-105".

1983 Amendment: In (2)(d), inserted language following "partnership"; and inserted (3) and (4).

Cross-References

Regulation of real estate brokers and salesmen, Title 37, ch. 51.

"Casual employment" defined, 39-71-116.

"Insurer" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

"Injury" or "injured" defined, 39-71-119.

Compensation plan No. 1, Title 39, ch. 71, part 21.

Compensation plan No. 2, Title 39, ch. 71, part 22.

Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-402. Extraterritorial application and reciprocity. (1) If a worker employed in this state who is subject to the provisions of this chapter temporarily leaves the state incidental to that employment and receives an injury arising out of and in the course of such employment, the provisions of this chapter shall apply to such worker as though he were injured within this state.

(2) If a worker from another state and his employer from another state are temporarily engaged in work within this state, this chapter shall not apply to them:

(a) if the employer and employee are bound by the provisions of the workers' compensation law or similar law of such other state which applies to them while they are in the state of Montana; and

(b) if the Workers' Compensation Act of this state is recognized and given effect as the exclusive remedy for workers employed in this state who are injured while temporarily employed in such other state.

(3) A certificate from an authorized officer of the workers' compensation department or similar agency of another state certifying that an employer of such other state is bound by the Workers' Compensation Act of the state and that its act will be applied to employees of the employer while in the state of Montana shall be prima facie evidence of the application of the workers' compensation law of the certifying state.

(4) The division may, with the approval of the governor, enter into agreements with workers' compensation agencies of other states for the purpose of promulgating regulations not inconsistent with the provisions of this chapter to carry out the extraterritorial application of the workers' compensation laws of the agreeing states.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2911, R.C.M. 1921; re-en. Sec. 2911, R.C.M. 1935; amd. Sec. 1, Ch. 70, L. 1967; amd. Sec. 17, Ch. 23, L. 1975; amd. Sec. 8, Ch. 550, L. 1977; R.C.M. 1947, 92-614(2) thru (5).

Cross-References

Governor — sole official organ of communication, 2-15-201.

"Division" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

"Worker" defined, 39-71-118.

"Injury" or "injured" defined, 39-71-119.

39-71-403. Plan three exclusive for state agencies — election of plan by other public corporations. (1) Where a state agency is the employer, the terms, conditions, and provisions of compensation plan No. 3 shall be exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this chapter by any state agency shall be considered to be ordinary and necessary expense of the agency, and the agency shall make appropriation of and pay such sums into the state compensation insurance fund at the time and in the manner provided for in this chapter, notwithstanding that the state agency may have failed to anticipate such ordinary and necessary expense in any budget, estimate of expenses, appropriations, ordinances, or otherwise.

(2) A public corporation, other than a state agency, may elect coverage under compensation plan No. 1, employer; plan No. 2, insurer; or plan No. 3, state insurance fund; separately or jointly with any other public corporation, other than a state agency. A public corporation electing compensation plan No. 1 may purchase reinsurance. A public corporation electing compensation plan No. 1 is subject to the same provisions as a private employer electing compensation plan No. 1.

(3) A public corporation, other than a state agency, that elects plan No. 1 may establish a fund sufficient to pay the compensation and benefits provided for in this chapter and chapter 72 and to discharge all liabilities that

reasonably incur during the fiscal year for which the election is effective. Proceeds from the fund must be used only to pay claims covered by this chapter and chapter 72 and for actual and necessary expenses required for the efficient administration of the fund.

(4) All money in the fund established under subsection (2) not needed to meet immediate expenditures must be invested by the governing body of the public corporation, and all proceeds of the investment shall be credited to the fund.

History: En. Sec. 3, Ch. 96, L. 1915; amd. Sec. 1, Ch. 100, L. 1919; amd. Sec. 1, Ch. 196, L. 1921; re-en. Sec. 2840, R.C.M. 1921; re-en. Sec. 2840, R.C.M. 1935; amd. Sec. 1, Ch. 410, L. 1971; amd. Sec. 6, Ch. 23, L. 1975; R.C.M. 1947, 92-206(part); amd. Sec. 1, Ch. 155, L. 1979; (2) thru (4)En. Sec. 2, Ch. 155, L. 1979; amd. Sec. 4, Ch. 21, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "state compensation insurance fund" for "accident or administration fund, as the case may be" in (1).

Cross-References

"Insurer" defined, 39-71-116.

"Public corporation" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

Compensation plan No. 1, Title 39, ch. 71, part 21.

Compensation plan No. 2, Title 39, ch. 71, part 22.

Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-404. Repealed. Sec. 16, Ch. 103, L. 1979.

History: En. Sec. 3, Ch. 96, L. 1915; amd. Sec. 1, Ch. 100, L. 1919; amd. Sec. 1, Ch. 196, L. 1921; re-en. Sec. 2840, R.C.M. 1921; re-en. Sec. 2840, R.C.M. 1935; amd. Sec. 1, Ch. 410, L. 1971; amd. Sec. 6, Ch. 23, L. 1975; R.C.M. 1947, 92-206(part).

39-71-405. Liability of employer who contracts work out. (1) An employer who contracts with an independent contractor to have work performed of a kind which is a regular or a recurrent part of the work of the trade, business, occupation, or profession of such employer is liable for the payment of benefits under this chapter to the employees of the contractor if the contractor has not properly complied with the coverage requirements of the Worker's Compensation Act. Any insurer who becomes liable for payment of benefits may recover the amount of benefits paid and to be paid and necessary expenses from the contractor primarily liable therein.

(2) Where an employer contracts to have any work to be done by a contractor other than an independent contractor, and the work so contracted to be done is a part or process in the trade or business of the employer, then the employer is liable to pay all benefits under this chapter to the same extent as if the work were done without the intervention of the contractor, and the work so contracted to be done shall not be construed to be casual employment. Where an employer contracts work to be done as specified in this subsection, the contractor and the contractor's employees shall come under that plan of compensation adopted by the employer.

(3) Where an employer contracts any work to be done, wholly or in part for the employer, by an independent contractor, where the work so contracted to be done is casual employment as to such employer, then the contractor shall become the employer for the purposes of this chapter.

History: (1)En. 92-410.1 by Sec. 1, Ch. 154, L. 1973; Sec. 92-410.1, R.C.M. 1947; (2), (3)En. Sec. 11, Ch. 96, L. 1915; re-en. Secs. 2901, 2902, 2903, R.C.M. 1921; re-en. Secs. 2901, 2902, 2903, R.C.M. 1935; Secs. 92-604, 92-605, 92-606, R.C.M. 1947; R.C.M. 1947, 92-410.1(part), 92-604, 92-605, 92-606; amd. Sec. 4, Ch. 103, L. 1979.

Cross-References

"Casual employment" defined, 39-71-116.

"Insurer" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Independent contractor" defined, 39-71-120.

39-71-406. Deduction from wages of any part of premium a misdemeanor. It is unlawful for the employer to deduct or obtain any part of any premium required to be paid by this chapter from the wages or earnings of his workers, and the making or attempt to make any such deduction is a misdemeanor.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2937, R.C.M. 1921; re-en. Sec. 2937, R.C.M. 1935; R.C.M. 1947, 92-811; amd. Sec. 59, Ch. 397, L. 1979; amd. Sec. 6, Ch. 101, L. 1985.

Compiler's Comments

1985 Amendment: At the end of the section, deleted "except that nothing in this section shall be construed as prohibiting contributions by employees to a hospital fund, as elsewhere in this chapter provided".

Cross-References

"Wages" defined, 39-71-116.
"Employer" defined, 39-71-117.
Penalty for misdemeanor, 46-18-212.

39-71-407. Liability of insurers. Every insurer is liable for the payment of compensation, in the manner and to the extent hereinafter provided, to an employee of an employer it insures who receives an injury arising out of and in the course of his employment or, in the case of his death from such injury, to his beneficiaries, if any.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2911, R.C.M. 1921; re-en. Sec. 2911, R.C.M. 1935; amd. Sec. 1, Ch. 70, L. 1967; amd. Sec. 17, Ch. 23, L. 1975; amd. Sec. 8, Ch. 550, L. 1977; R.C.M. 1947, 92-614(1).

Cross-References

"Insurer" defined, 39-71-116.
"Employer" defined, 39-71-117.
"Employee" defined, 39-71-118.
"Injured" or "injury" defined, 39-71-119.

39-71-408. Liability as first lien in case of bankruptcy or failure. In case of bankruptcy, insolvency, liquidation, or the failure of an employer or insurer to meet any obligations imposed by this chapter, every liability which may be due under this chapter shall constitute a first lien upon any deposit made by such employer or insurer, and if such deposit shall not be sufficient to secure the payment of such liability in the manner and at the times provided for in this chapter, the deficiency shall be a lien upon all the property of such employer or insurer within this state and shall be prorated with other lienable claims and shall have preference over the claim of any creditor or creditors of such employer or insurer except the claims of other lienors.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2928, R.C.M. 1921; re-en. Sec. 2928, R.C.M. 1935; R.C.M. 1947, 92-802.

Cross-References

"Insurer" defined, 39-71-116.
"Employer" defined, 39-71-117.

39-71-409. Waivers by employee invalid. No agreement by an employee to waive any rights under this chapter for any injury to be received shall be valid.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2929, R.C.M. 1921; re-en. Sec. 2929, R.C.M. 1935; R.C.M. 1947, 92-803.

Cross-References

"Employee" defined, 39-71-118.
"Injury" or "injured" defined, 39-71-119.

39-71-410. Employees bound by plan adopted by employer — election not to be bound by corporate officers. (1) Every employee whose employer is bound by the provisions of this chapter is subject to and bound by the provisions of that plan of compensation adopted by his employer, except that pursuant to such rules as the division shall from time to time promulgate and subject in all cases to the review of the division, officers of private corporations may elect not to be bound as employees under this chapter by a written notice in the form provided by the division, served in the following manner:

(a) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the employer;

(b) if the employer has elected to be bound by the provisions of compensation plan No. 2, by delivering the notice to the board of directors of the employer or the insurer;

(c) if the employer has elected to be bound or is bound by the provisions of compensation plan No. 3, by delivering the notice to the division.

(2) The appointment or election of an officer of a corporation for the purpose of excluding an employee from coverage under this chapter does not entitle such officer to elect not to be bound as an employee under this chapter. In any case, the notice must be signed by the officer under oath or equivalent affirmation and is subject to the penalties for false swearing.

(3) The division shall review any election by officers of private corporations not to be bound as an employee to assure compliance with this chapter.

History: En. Sec. 3, Ch. 96, L. 1915; re-en. Sec. 2842, R.C.M. 1921; re-en. Sec. 2842, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1963; amd. Sec. 1, Ch. 145, L. 1971; amd. Sec. 1, Ch. 95, L. 1974; R.C.M. 1947, 92-208; amd. Sec. 60, Ch. 197, L. 1979.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

"Division" defined, 39-71-116.

"Insurer" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

Compensation plan No. 1, Title 39, ch. 71, part 21.

Compensation plan No. 2, Title 39, ch. 71, part 22.

Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-411. Provisions of chapter exclusive remedy — nonliability of insured employer. For all employments covered under the Workers' Compensation Act or for which an election has been made for coverage under this chapter, the provisions of this chapter are exclusive. Except as provided in part 5 of this chapter for uninsured employers and except as otherwise provided in the Workers' Compensation Act, an employer is not subject to any liability whatever for the death of or personal injury to an employee covered by the Workers' Compensation Act or for any claims for contribution or indemnity asserted by a third person from whom damages are sought on account of such injuries or death. The Workers' Compensation Act binds the employee himself, and in case of death binds his personal representative and all persons having any right or claim to compensation for his injury or death, as well as the employer and the servants and employees of such employer and those conducting his business during liquidation, bankruptcy, or insolvency.

History: En. 92-204.1 by Sec. 1, Ch. 493, L. 1973; amd. Sec. 2, Ch. 550, L. 1977; R.C.M. 1947, 92-204.1(part); amd. Sec. 1, Ch. 329, L. 1979; amd. Sec. 61, Ch. 397, L. 1979.

Cross-References

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

"Injury" defined, 39-71-119.

39-71-412. Liability of third party other than employer or fellow employee — additional cause of action. The right to compensation and medical benefits as provided by this chapter is not affected by the fact that the injury, occupational disease, or death is caused by the negligence of a third party other than the employer or the servants or employees of the employer. Whenever such event occurs to an employee while performing the duties of his employment and such event is caused by the act or omission of some persons or corporations other than his employer or the servants or employees of his employer, the employee or in case of his death his heirs or personal representative shall, in addition to the right to receive compensation under this chapter, have a right to prosecute any cause of action he may have for damages against such persons or corporations.

History: En. 92-204.1 by Sec. 1, Ch. 493, L. 1973; amd. Sec. 2, Ch. 550, L. 1977; R.C.M. 1947, 92-204.1(part).

Cross-References

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

"Injury" defined, 39-71-119.

39-71-413. Liability of fellow employee for intentional and malicious acts or omissions — additional cause of action. If an employee receives an injury while performing the duties of his employment and the injury or injuries so received by the employee are caused by the intentional and malicious act or omission of a servant or employee of his employer, then the employee or in case of his death his heirs or personal representatives shall, in addition to the right to receive compensation under the Workers' Compensation Act, have a right to prosecute any cause of action he may have for damages against the servants or employees of his employer causing the injury.

History: En. 92-204.1 by Sec. 1, Ch. 493, L. 1973; amd. Sec. 2, Ch. 550, L. 1977; R.C.M. 1947, 92-204.1(part).

Cross-References

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

"Injury" defined, 39-71-119.

39-71-414. Subrogation. (1) If an action is prosecuted as provided for in 39-71-412 or 39-71-413 and except as otherwise provided in this section, the insurer is entitled to subrogation for all compensation and benefits paid or to be paid under the Workers' Compensation Act. The insurer's right of subrogation is a first lien on the claim, judgment, or recovery.

(2) (a) If the injured employee intends to institute the third party action, he shall give the insurer reasonable notice of his intention to institute the action.

(b) The injured employee may request that the insurer pay a proportionate share of the reasonable cost of the action, including attorneys' fees.

(c) The insurer may elect not to participate in the cost of the action. If this election is made, the insurer waives 50% of its subrogation rights granted by this section.

(d) If the injured employee or the employee's personal representative institutes the action, the employee is entitled to at least one-third of the amount recovered by judgment or settlement less a proportionate share of reasonable costs, including attorneys' fees, if the amount of recovery is insufficient to provide the employee with that amount after payment of subrogation.

(3) If an injured employee refuses or fails to institute the third party action within 1 year from the date of injury, the insurer may institute the action in the name of the employee and for the employee's benefit or that of the employee's personal representative. If the insurer institutes the action, it shall pay to the employee any amount received by judgment or settlement which is in excess of the amounts paid or to be paid under the Workers' Compensation Act after the insurer's reasonable costs, including attorneys' fees for prosecuting the action, have been deducted from the recovery.

(4) An insurer may enter into compromise agreements in settlement of subrogation rights.

(5) If the amount of compensation and other benefits payable under the Workers' Compensation Act have not been fully determined at the time the employee, the employee's heirs or personal representatives, or the insurer have settled in any manner the action as provided for in this section, the division shall determine what proportion of the settlement shall be allocated under subrogation. The division's determination may be appealed to the workers' compensation judge.

History: En. 92-204.2 by Sec. 3, Ch. 550, L. 1977; R.C.M. 1947, 92-204.2.

Cross-References

"Division" defined, 39-71-116.

"Insurer" defined, 39-71-116.

"Year" defined, 39-71-116.

"Employee" defined, 39-71-118.

"Injury" or "injured" defined, 39-71-119.

Part 5

Uninsured Employers

39-71-501. Definition of uninsured employer. For the purposes of this part, "uninsured employer" means an employer who has not properly complied with the provisions of 39-71-401.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(part); amd. Sec. 62, Ch. 397, L. 1979.

39-71-502. Creation and purpose of uninsured employers' fund. There is created an uninsured employers' fund. The purpose of the fund is to pay to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(part).

Cross-References

"Uninsured employer" defined, 39-71-501.

Limitations on benefit entitlement under fund, 39-71-510.

Compensation and benefits generally, Title 39, ch. 71, part 7.

39-71-503. Administration of fund. (1) The division shall administer the fund and shall pay all proper benefits to injured employees of uninsured employers.

(2) Proper surpluses and reserves shall be kept for the fund. The board of investments shall invest the moneys of the fund. The cost of administration of the fund shall be paid out of the money in the fund.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(part).

Cross-References

Investments, Title 17, ch. 6, part 2.

"Division" defined, 39-71-116.

"Payroll" defined, 39-71-116.

39-71-504. Funding of fund — option for agreement between division and injured employee. The fund shall be funded in the following manner:

(1) The division shall require that the uninsured employer pay to the fund a penalty of either double the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or $200, whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the division shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured. An assessment for payroll paid by the uninsured employer for any time prior to July 1, 1977, may not be made.

(2) (a) The fund shall receive from an uninsured employer an amount equal to all benefits paid or to be paid from the fund to an injured employee of the uninsured employer. However, the uninsured employer's liability under this subsection (2)(a) may not exceed $50,000.

(b) The dollar limitation does not apply to an uninsured employer's liability to an injured employee or the employee's beneficiaries under 39-71-509 or 39-71-515.

(3) The division may determine that the $1,000 assessments that are charged against an insurer in each case of an industrial death under 39-71-902(1) shall be paid to the uninsured employers' fund rather than the subsequent injury fund.

(4) The division may enter into an agreement with the injured employee or the employee's beneficiaries to assign to the employee or the beneficiaries all or part of the funds received by the division from the uninsured employer pursuant to subsection (2)(a).

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(2); amd. Sec. 5, Ch. 103, L. 1979; amd. Sec. 1, Ch. 601, L. 1985.

Compiler's Comments

1985 Amendment: At end of (2)(a) increased liability limit from $30,000 to $50,000; inserted (2)(b) and (4).

Cross-References

"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Injury" defined, 39-71-119.
"Uninsured employer" defined, 39-71-501.

39-71-505. Applicability of other provisions of chapter to fund. All appropriate provisions in the Workers' Compensation Act apply to the fund in the same manner as they apply to compensation plans No. 1, 2, and 3.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(5).

Cross-References

Compensation plan No. 1, Title 39, ch. 71, part 21.

Compensation plan No. 2, Title 39, ch. 71, part 22.

Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-506. Collection of payments from uninsured employer by suit. If, upon demand of the division, an uninsured employer refuses to make the payments to the fund that are provided for in subsections (1) and (2) of 39-71-504, the sums may be collected by the division through suit. The division may settle through compromise with an uninsured employer the amount due the fund under 39-71-504.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(3); amd. Sec. 63, Ch. 397, L. 1979.

Cross-References
"Division" defined, 39-71-116.
"Uninsured employer" defined, 39-71-501.

39-71-507. Division to order uninsured employer to cease operations — noncompliance with order a misdemeanor. When the division discovers an uninsured employer, it shall order him to cease operations until he has elected to be bound by a compensation plan. An employer who does not comply with the division's order to cease operations is guilty of a misdemeanor.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(6).

Cross-References
"Division" defined, 39-71-116.
"Uninsured employer" defined, 39-71-501.
"Misdemeanor" defined, 45-2-101.
Penalty when no penalty specified, 46-18-212.

39-71-508. Coordination of remedies. An employee who suffers an injury arising out of and in the course of employment while working for an uninsured employer as defined in 39-71-501 or an employee's beneficiaries in injuries resulting in death may pursue all remedies concurrently, including but not limited to:

(1) a claim for benefits from the uninsured employers' fund;

(2) a damage action against the employer in accordance with 39-71-509;

(3) an independent action against an employer as provided in 39-71-515; or

(4) any other civil remedy provided by law.

History: En. 92-213 by Sec. 5, Ch. 550, L. 1977; R.C.M. 1947, 92-213(part); amd. Sec. 2, Ch. 601, L. 1985.

Compiler's Comments
1985 Amendment: In introductory clause, at end, substituted "pursue all remedies concurrently, including but not limited to" for "elect to either receive"; substituted (1) and (2) for former text that read: "benefits from the uninsured employers' fund or pursue a damage action against the employer. However, once an election has been made to either take from the fund or pursue a damage action, the election is final and binding on the employee or the employee's beneficiaries, heirs, and personal representatives. An injured employee or the employee's beneficiaries may not receive both benefits from the fund and pursue a damage action"; and inserted (3) and (4).

Cross-References
"Employee" defined, 39-71-118.
"Injury" defined, 39-71-119.
"Uninsured employer" defined, 39-71-501.

39-71-509. Action against uninsured employer — limitation of employer's defenses. If an injured employee or the employee's beneficiaries bring an action to recover damages for personal injuries sustained or for death resulting from personal injuries so sustained, it is not a defense for the employer that the:

(1) employee was negligent unless such negligence was willful;

(2) injury was caused by the negligence of a fellow employee; or

(3) employee had assumed the risks inherent in, incident to, or arising out of his employment or arising from the failure of the employer to provide and maintain a reasonably safe place to work or reasonably safe tools or appliances.

History: En. 92-213 by Sec. 5, Ch. 550, L. 1977; R.C.M. 1947, 92-213(part); amd. Sec. 5, Ch. 601, L. 1985.

Compiler's Comments
1985 Amendment: In introductory clause, after "beneficiaries", deleted "elect to".

Cross-References
"Reasonably safe place to work" defined, 39-71-116.

"Reasonably safe tools and appliances" defined, 39-71-116.
"Employee" defined, 39-71-118.
"Injury" or "injured" defined, 39-71-119.
"Uninsured employer" defined, 39-71-501.

39-71-510. Limitation on benefit entitlement under fund. Notwithstanding the provisions of 39-71-407, 39-71-502, and 39-71-503, injured employees or an employee's beneficiaries who pursue a claim for benefits from the uninsured employers' fund are not granted an entitlement by this state for full workers' compensation benefits from the fund. Benefits from the fund must be paid in accordance with the sums in the fund. If the division determines at any time that the sums in the fund are not adequate to fully pay all claims, the division may make appropriate proportionate reductions in benefits to all claimants. The reductions do not entitle claimants to retroactive reimbursements in the future.

History: En. 92-213 by Sec. 5, Ch. 550, L. 1977; R.C.M. 1947, 92-213(2); amd. Sec. 64, Ch. 397, L. 1979; amd. Sec. 4, Ch. 601, L. 1985.

Compiler's Comments

1985 Amendment: In first sentence near middle after "beneficiaries who", substituted "pursue a claim for" for "elect to receive".

Cross-References

"Division" defined, 39-71-116.

39-71-511. Setoffs to claim against fund. A claim for benefits from the uninsured employer's fund must be discharged, finally or periodically, to the extent that an employee or the employee's beneficiaries receive actual monetary compensation by judgment or settlement from the uninsured employer, a third party who shares liability as defined in 39-71-412, or a fellow employee who shares liability as defined in 39-71-413.

History: En. Sec. 3, Ch. 601, L. 1985.

39-71-512 through 39-71-514 reserved.

39-71-515. Independent cause of action. (1) An injured employee or the employee's beneficiaries have an independent cause of action against an uninsured employer for failure to be enrolled in a compensation plan as required by this chapter.

(2) In such an action, prima facie liability of the uninsured employer exists if the claimant proves, by a preponderance of the evidence, that:

(a) the employer was required by law to be enrolled under compensation plan No. 1, 2, or 3 with respect to the claimant; and

(b) the employer was not so enrolled on the date of the injury or death.

(3) It is not a defense to such an action that the employee had knowledge of or consented to the employer's failure to carry insurance or that the employee was negligent in permitting such failure to exist.

(4) The amount of recoverable damages in such an action is the amount of compensation that the employee would have received had the employer been properly enrolled under compensation plan No. 1, 2, or 3.

(5) A plaintiff who prevails in an action brought under this section is entitled to recover reasonable costs and attorney fees incurred in the action, in addition to his damages.

History: En. Sec. 6, Ch. 601, L. 1985.

39-71-516. District court venue and jurisdiction for independent cause of action. An injured employee or an employee's beneficiaries pursuing an independent cause of action pursuant to 39-71-515 must bring such action in the district court in the district where the claimant resides or where the alleged violation occurred. The court may grant such interim relief as it considers appropriate, including but not limited to injunctive relief, attachment, or receivership.

History: **En. Sec. 7, Ch. 601, L. 1985.**

39-71-517. Requirement to serve papers. In pursuing remedies under this part, an injured employee or his beneficiaries shall serve all pleadings and all other litigation papers on the division and the uninsured employer, regardless of whether the division or the uninsured employer is a party to the particular action to which the papers relate.

History: **En. Sec. 8, Ch. 601, L. 1985.**

39-71-518. Setoffs against remaining liability. Any actual monetary compensation received by judgment or settlement by the injured employee or the employee's beneficiaries under 39-71-509 or 39-71-515 may be offset by the uninsured employer against his remaining liability under those sections.

History: **En. Sec. 9, Ch. 601, L. 1985.**

39-71-519. Settlement. The division, the uninsured employer, the injured employee or his beneficiaries, a third party who shares liability as defined in 39-71-412, or a fellow employee who shares liability as defined in 39-71-413 may enter into a settlement agreement to finally settle the rights and liabilities under this part of any or all of the parties. Such a settlement is subject to division approval in accordance with 39-71-741.

History: **En. Sec. 10, Ch. 601, L. 1985.**

Part 6

Claims for Benefits

39-71-601. Statute of limitation on presentment of claim — waiver. (1) In case of personal injury or death, all claims shall be forever barred unless presented in writing to the employer, the insurer, or the division, as the case may be, within 12 months from the date of the happening of the accident, either by the claimant or someone legally authorized to act for him in his behalf.

(2) The division may, upon a reasonable showing by the claimant of lack of knowledge of disability, waive the time requirement up to an additional 24 months.

History: **En. Sec. 10, Ch. 96, L. 1915; amd. Sec. 3, Ch. 100, L. 1919; re-en. Sec. 2899, R.C.M. 1921; amd. Sec. 1, Ch. 34, L. 1935; re-en. Sec. 2899, R.C.M. 1935; amd. Sec. 1, Ch. 264, L. 1973; R.C.M. 1947, 92-601.**

Cross-References
"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Employer" defined, 39-71-117.

39-71-602. Statute of limitation not to apply during minority or mental incompetency unless guardian appointed. No limitation of time as provided in 39-71-601 or in this chapter, known as the Workers' Compensation Act, shall run as against any injured worker who is mentally incompetent and without a guardian or an injured minor under 18 years of age who may be without a parent or guardian. A guardian in either case may be appointed by any court of competent jurisdiction, in which event the period of limitations as provided for in 39-71-601 shall begin to run on the date of appointment of such guardian or when such minor arrives at 18 years of age, whichever date is earlier.

History: En. Sec. 10, Ch. 96, L. 1915; re-en. Sec. 2900, R.C.M. 1921; amd. Sec. 9, Ch. 121, L. 1925; re-en. Sec. 2900, R.C.M. 1935; amd. Sec. 1, Ch. 79, L. 1939; amd. Sec. 5, Ch. 235, L. 1947; R.C.M. 1947, 92-602; amd. Sec. 65, Ch. 397, L. 1979.

Cross-References

Person under disability — Statute of Limitations extended, 27-2-401.

Persons under disability — guardianship and conservatorship, Title 72, ch. 5.

39-71-603. Notice of injuries other than death to be submitted within sixty days. No claim to recover benefits under the Workers' Compensation Act, for injuries not resulting in death, may be considered compensable unless, within 60 days after the occurrence of the accident which is claimed to have caused the injury, notice of the time and place where the accident occurred and the nature of the injury is given to the employer or the employer's insurer by the injured employee or someone on the employee's behalf. Actual knowledge of the accident and injury on the part of the employer or the employer's managing agent or superintendent in charge of the work upon which the injured employee was engaged at the time of the injury is equivalent to notice.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2933, R.C.M. 1921; amd. Sec. 7, Ch. 177, L. 1929; re-en. Sec. 2933, R.C.M. 1935; amd. Sec. 9, Ch. 234, L. 1957; R.C.M. 1947, 92-807; amd. Sec. 6, Ch. 103, L. 1979; amd. Sec. 66, Ch. 397, L. 1979.

Cross-References

"Insurer" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

"Injury" defined, 39-71-119.

39-71-604. Application for compensation. (1) Where a worker is entitled to benefits under this chapter, the worker shall file with the insurer or the division all reasonable information needed by the insurer to determine compensability. It is the duty of the worker's attending physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the division without charge to the worker. The filing of forms or other documentation by the attending physician does not constitute a claim for compensation.

(2) Where death results from an injury, the parties entitled to compensation or someone in their behalf shall file a claim with the insurer or the division. The claim must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the division.

History: (1)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3006, R.C.M. 1921; re-en. Sec. 3006, R.C.M. 1935; amd. Sec. 6, Ch. 213, L. 1945; amd. Sec. 78, Ch. 23, L. 1975; Sec. 92-1118, R.C.M. 1947; (2)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3008, R.C.M. 1921; re-en. Sec. 3008, R.C.M. 1935; amd. Sec. 80, Ch. 23, L. 1975; Sec. 92-1120, R.C.M. 1947; R.C.M. 1947, 92-1118, 92-1120; amd. Sec. 7, Ch. 103, L. 1979.

Cross-References

"Division" defined, 39-71-116.

"Insurer" defined, 39-71-116.

"Physician" defined, 39-71-116.

"Injury" or "injured" defined, 39-71-119.

39-71-605. Examination of employee by physician — effect of refusal to submit to examination — report and testimony of physician — cost. (1) (a) Whenever in case of injury the right to compensation under this chapter would exist in favor of any employee, he shall, upon the written request of his employer or the insurer, submit from time to time to examination by a physician or panel of physicians, who shall be provided and paid for by such employer or insurer, and shall likewise submit to examination from time to time by any physician or panel of physicians selected by the division or any member or examiner or referee thereof.

(b) The request or order for such examination shall fix a time and place therefor, due regard being had to the convenience of the employee and his physical condition and ability to attend at the time and place fixed. The employee shall be entitled to have a physician present at any such examination. So long as the employee, after such written request, shall fail or refuse to submit to such examination or shall in any way obstruct the same, his right to compensation shall be suspended. Any physician or panel of physicians employed by the employer, the insurer, or the division who shall make or be present at any such examination may be required to testify as to the results thereof.

(2) In the event of a dispute concerning the physical condition of a claimant or the cause or causes of his injury or disability, if any, the division, at the request of the claimant, employer, or insurer, as the case may be, shall require the claimant to submit to such examination as it may deem desirable by a physician or panel of physicians within the state or elsewhere who have had adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute. The physician or panel of physicians making the examination shall file a written report of findings with the division for its use in the determination of the controversy involved. The division shall pay the physician or panel of physicians for the examination and shall be reimbursed by the party who requested it.

History: (1)En. Sec. 13, Ch. 96, L. 1915; re-en. Sec. 2906, R.C.M. 1921; re-en. Sec. 2906, R.C.M. 1935; amd. Sec. 16, Ch. 23, L. 1975; Sec. 92-609, R.C.M. 1947; (2)En. Sec. 10, Ch. 234, L. 1957; amd. Sec. 27, Ch. 23, L. 1975; Sec. 92-814.1, R.C.M. 1947; R.C.M. 1947, 92-609, 92-814.1; amd. Sec. 1, Ch. 422, L. 1985.

Compiler's Comments

1985 Amendment: In six places, after "physician", inserted reference to panel of physicians, the first such reference in (2) being accomplished by substituting "physician or panel of physicians" for "physician or physicians"; and in (1)(b) in second sentence, after "physician", deleted "provided and paid for by himself".

Cross-References

"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Physician" defined, 39-71-116.
"Employer" defined, 39-71-117.
"Employee" defined, 39-71-118.
"Injured" or "injury" defined, 39-71-119.

39-71-606. Insurer to accept or deny claim within thirty days of receipt — notice of denial — notice to employer. (1) Every insurer under any plan for the payment of workers' compensation benefits shall, within 30 days of receipt of a claim for compensation, either accept or deny the claim, and if denied shall inform the claimant and the division in writing of such denial.

(2) Upon the request of an employer it insures, an insurer shall notify the employer of all compensation benefits that are ongoing and are being charged against that employer's account.

History: En. Sec. 1, Ch. 477, L. 1973; amd. Sec. 1, Ch. 173, L. 1974; R.C.M. 1947, 92-615(part); amd. Sec. 1, Ch. 122, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (2).

Cross-References

"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Employer" defined, 39-71-117.

39-71-607. Suspension of payments by insurer up to thirty days pending receipt of medical information. Under rules adopted by the division and in the discretion of the division, an insurer may suspend compensation payments for not more than 30 days pending the receipt of medical information.

History: En. Sec. 2, Ch. 477, L. 1973; amd. Sec. 2, Ch. 173, L. 1974; R.C.M. 1947, 92-616(part).

Cross-References
"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.

39-71-608. Payments within thirty days by insurer without admission of liability or waiver of defense authorized — notice. An insurer may, after written notice to the claimant and the division, make payment of compensation benefits within 30 days of receipt of a claim for compensation without such payments being construed as an admission of liability or a waiver of any right of defense.

History: En. Sec. 1, Ch. 477, L. 1973; amd. Sec. 1, Ch. 173, L. 1974; R.C.M. 1947, 92-615(part).

Cross-References
"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.

39-71-609. Denial of claim after payments made or termination of benefits by insurer — fourteen days' notice required. If an insurer determines to deny a claim on which payments have been made under 39-71-608 during a time of further investigation or, after a claim has been accepted, terminates biweekly compensation benefits, it may do so only after 14 days' written notice to the claimant, the claimant's authorized representative, if any, and the division. However, if an insurer has knowledge that a claimant has returned to work, compensation benefits may be terminated as of the time the claimant returned to work.

History: En. Sec. 1, Ch. 477, L. 1973; amd. Sec. 1, Ch. 173, L. 1974; R.C.M. 1947, 92-615(part); amd. Sec. 8, Ch. 103, L. 1979.

Cross-References
"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.

39-71-610. Termination of benefits by insurer — division order to pay disputed benefits prior to hearing — limitation on order — right of reimbursement. If an insurer terminates biweekly compensation benefits and the termination of compensation benefits is disputed by the claimant, the division may, upon written request, order an insurer to pay additional biweekly compensation benefits prior to a hearing, but in no event may the biweekly compensation benefits be ordered to be paid under this section for a period exceeding 49 days or for any period subsequent to the date of a hearing. If after a hearing it is held that the insurer was not liable for the compensation payments ordered by the division, the insurer has the right to be reimbursed for such payments by the claimant.

History: En. 92-617 by Sec. 1, Ch. 124, L. 1975; R.C.M. 1947, 92-617.

Cross-References
"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.

39-71-611. Costs and attorneys' fees payable on denial of claim or termination of benefits later found compensable. In the event an insurer denies liability for a claim for compensation or terminates compensation benefits and the claim is later adjudged compensable by the workers' compensation judge or on appeal, the insurer shall pay reasonable costs and attorneys' fees as established by the workers' compensation judge.

History: En. Sec. 2, Ch. 477, L. 1973; amd. Sec. 2, Ch. 173, L. 1974; R.C.M. 1947, 92-616(part); amd. Sec. 2, Ch. 63, L. 1979.

Cross-References

Attorneys' fees, Title 25, ch. 10, part 3.

"Insurer" defined, 39-71-116.

39-71-612. Costs and attorneys' fees that may be assessed against an employer or insurer by workers' compensation judge. (1) If an employer or insurer pays or tenders payment of compensation under chapter 71 or 72 of this title but controversy relates to the amount of compensation due, the case is brought before the workers' compensation judge for adjudication of the controversy, and the award granted by the judge is greater than the amount paid or tendered by the employer or insurer, a reasonable attorney's fee as established by the workers' compensation judge if the case has gone to a hearing may be awarded by the judge in addition to the amount of compensation.

(2) When an attorney's fee is awarded against an employer or insurer under this section there may be further assessed against the employer or insurer reasonable costs, fees, and mileage for necessary witnesses attending a hearing on the claimant's behalf. Both the necessity for the witness and the reasonableness of the fees must be approved by the workers' compensation judge.

History: En. 92-618 by Sec. 1, Ch. 187, L. 1975; R.C.M. 1947, 92-618; amd. Sec. 1, Ch. 575, L. 1985.

Compiler's Comments

1985 Amendment: In (1), near middle after "due", inserted "the case is brought before the workers' compensation judge for adjudication of the controversy", before "award", deleted "settlement or", after "award", inserted "granted by the judge", and after "established by", deleted "the division or", after "hearing", deleted "based solely upon the difference between the amount settled for or awarded and the amount tendered or paid", and after "awarded", inserted "by the judge"; and in (2) near end after "approved by", deleted "the division or".

Cross-References

Attorneys' fees, Title 25, ch. 10, part 3.

"Division" defined, 39-71-116.

"Insurer" defined, 39-71-116.

"Employer" defined, 39-71-117.

39-71-613. Regulation of attorneys' fees — forfeiture of fee for noncompliance. (1) When an attorney represents or acts on behalf of a claimant or any other party on any workers' compensation claim, the attorney shall submit to the division a contract of employment stating specifically the terms of the fee arrangement between the attorney and the claimant.

(2) The administrator of the division may regulate the amount of the attorney's fee in any workers' compensation case. In regulating the amount of the fee, the administrator shall consider the time the attorney was required to spend on the case, the complexity of the case, and any other relevant matter the administrator may consider appropriate.

(3) If an attorney violates a provision of this section, a rule adopted under this section, or an order fixing attorney's fee under this section, he shall forfeit the right to any fee which he may have collected or been entitled to collect.

History: En. 92-619 by Sec. 1, Ch. 402, L. 1975; R.C.M. 1947, 92-619.

Cross-References
Attorneys' fees, Title 25, ch. 10, part 3.
"Division" defined, 39-71-116.
"Order" defined, 39-71-116.

39-71-614. Calculation of attorney fees. (1) The amount of an attorney's fee assessed against an employer or insurer under 39-71-611 or 39-71-612 must be based exclusively on the time spent by the attorney in representing the claimant on the issues brought before the workers' compensation judge. The attorney must document the time spent and give the documentation to the judge. The judge shall determine a reasonable attorney fee and assess costs. He is not bound by the documentation submitted to him. The hourly fee the judge applies to the time spent must be based on the attorney's customary and current hourly fee for legal work performed in this state.

(2) This section does not restrict a claimant and an attorney from entering into a contingency fee arrangement under which the attorney receives a percentage of the amount of compensation payments received by the claimant because of the efforts of the attorney. However, an amount equal to any fee and costs assessed against an employer or insurer under 39-71-611 or 39-71-612 and this section must be deducted from the fee an attorney is entitled to from the claimant under a contingency fee arrangement.

History: En. Sec. 2, Ch. 575, L. 1985.

Cross-References
Attorneys' fees, Title 25, ch. 10, part 3.

Part 7

Compensation and Benefits Generally

Part Cross-References
Workers' compensation exempt from medical services lien, 71-3-1118.

39-71-701. Compensation for injuries producing temporary total disability. (1) Weekly compensation benefits for injury producing total temporary disability shall be 66 ⅔% of the wages received at the time of the injury. The maximum weekly compensation benefits shall not exceed $110 beginning July 1, 1973. Beginning July 1, 1974, the maximum weekly compensation benefits shall not exceed the state's average weekly wage. Total temporary disability benefits shall be paid for the duration of the worker's temporary disability.

(2) In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for such week, which amount is to be calculated from the date of the disability social security entitlement.

History: En. 92-701.1 by Sec. 1, Ch. 471, L. 1973; R.C.M. 1947, 92-701.1; amd. Sec. 5, Ch. 21, L. 1981.

Compiler's Comments
1981 Amendment: Inserted "disability" before "benefits" near beginning of (2) and added the final phrase beginning with "which amount . . .".

Cross-References
"Average weekly wage" defined, 39-71-116.

"Temporary total disability" defined, 39-71-116.

"Wages" defined, 39-71-116.

"Injury" or "injured" defined, 39-71-119.

39-71-702. Compensation for injuries producing total permanent disability. (1) Weekly compensation benefits for injury producing total permanent disability shall be 66 ⅔% of the wages received at the time of the injury. The maximum weekly compensation benefits shall not exceed the state's average weekly wage. Total permanent disability benefits shall be paid for the duration of the worker's total permanent disability.

(2) In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for such week, which amount is to be calculated from the date of the disability social security entitlement.

History: En. 92-702.1 by Sec. 1, Ch. 202, L. 1973; amd. Sec. 1, Ch. 272, L. 1974; R.C.M. 1947, 92-702.1; amd. Sec. 6, Ch. 21, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "disability" before "benefits" near beginning of (2) and added the final phrase beginning with "which amount . . .".

Cross-References

"Average weekly wage" defined, 39-71-116.

"Permanent total disability" defined, 39-71-116.

"Wages" defined, 39-71-116.

"Injury" or "injured" defined, 39-71-119.

39-71-703. Compensation for injuries causing partial disability. (1) Weekly compensation benefits for injury producing partial disability shall be 66 ⅔% of the actual diminution in the worker's earning capacity measured in dollars, subject to a maximum weekly compensation of one-half the state's average weekly wage.

(2) The compensation shall be paid during the period of disability, not exceeding, however, 500 weeks in cases of partial disability. However, compensation for partial disability resulting from the loss of or injury to any member shall not be payable for a greater number of weeks than is specified in 39-71-705 for the loss of the member.

History: En. 92-703.1 by Sec. 1, Ch. 155, L. 1973; amd. Sec. 1, Ch. 241, L. 1975; amd. Sec. 1, Ch. 278, L. 1975; R.C.M. 1947, 92-703.1.

Cross-References

"Average weekly wage" defined, 39-71-116.

"Injury" or "injured" defined, 39-71-119.

39-71-704. Payment of medical, hospital, and related services. (1) In addition to the compensation provided by this chapter and as an additional benefit separate and apart from compensation, the following shall be furnished:

(a) After the happening of the injury, the insurer shall furnish, without limitation as to length of time or dollar amount, reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the division for the injuries sustained.

(b) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(2) A relative value fee schedule for medical, chiropractic, and paramedical services provided for in this chapter, excluding hospital services, shall be established annually by the workers' compensation division and become effective in January of each year. The maximum fee schedule must be adopted as a relative value fee schedule of medical, chiropractic, and paramedical services, with unit values to indicate the relative relationship within each grouping of specialties. Medical fees must be based on the median fees as billed to the state compensation insurance fund during the year preceding the adoption of the schedule. The division shall adopt rules establishing relative unit values, groups of specialties, the procedures insurers must use to pay for services under the schedule, and the method of determining the median of billed medical fees. These rules shall be modeled on the 1974 revision of the 1969 California Relative Value Studies.

History: En. 92-706.1 by Sec. 1, Ch. 252, L. 1973; amd. Sec. 1, Ch. 43, L. 1975; amd. Sec. 1, Ch. 189, L. 1975; R.C.M. 1947, 92-706.1(1); amd. Sec. 1, Ch. 90, L. 1981; amd. Sec. 2, Ch. 422, L. 1985.

Compiler's Comments

1985 Amendment: In (1)(a) and (1)(b) in first sentence, before "insurer", deleted "employer or"; and in (2) substituted present text for "Fees and charges for medical, chiropractic, and paramedical services provided for in this chapter, excluding hospital services, shall be established by the workers' compensation division based on the 90th percentile of usual and customary charges of the medical specialty involved based upon the most recent 6-months data as determined in January and July of each year."

1981 Amendment: Renumbered subsections (1) and (2) as (1)(a) and (1)(b); added subsection (2) (replaced in 1985).

Cross-References

"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Physician" defined, 39-71-116.
"Employer" defined, 39-71-117.
"Injury" or "injured" defined, 39-71-119.

39-71-705. Compensation for loss of certain body members or loss of hearing. (1) In addition to temporary total disability benefits allowed in this chapter, indemnity benefits for loss of a member shall be paid at the weekly rate provided in 39-71-703 and shall be paid for the following periods:

one arm at or near shoulder	280 weeks
one arm at the elbow	240 weeks
one arm between wrist and elbow	220 weeks
one hand	200 weeks
one thumb and the metacarpal bone thereof	75 weeks
one thumb at the proximal joint	37 weeks
one thumb at the second distal joint	25 weeks
one first finger and the metacarpal bone thereof	40 weeks
one first finger at the proximal joint	30 weeks
one first finger at the second joint	22 weeks
one first finger at the distal joint	15 weeks
one second finger and the metacarpal bone thereof	37 weeks
one second finger at the proximal joint	20 weeks
one second finger at the second joint	15 weeks
one second finger at the distal joint	8 weeks
one third finger and the metacarpal bone thereof	25 weeks
one third finger at the proximal joint	15 weeks
one third finger at the second joint	10 weeks
one third finger at the distal joint	5 weeks
one fourth finger and the metacarpal bone thereof	15 weeks

one fourth finger at the proximal joint	11 weeks
one fourth finger at the second joint	8 weeks
one fourth finger at the distal joint	6 weeks
one leg at or near the hip joint as to preclude the use of an artificial limb	300 weeks
one leg at or above the knee where stump remains sufficient to permit the use of an artificial limb	200 weeks
one leg between knee and ankle	190 weeks
one foot at the ankle	180 weeks
one great toe with the metatarsal bone thereof	37 weeks
one great toe at the proximal joint	18 weeks
one great toe at the second joint	12 weeks
one toe other than the great toe with the metatarsal bone thereof	16 weeks
one toe other than the great toe at the proximal joint	8 weeks
one toe other than the great toe at second or distal joint	5 weeks
one eye by enucleation	165 weeks
Total blindness of one eye	140 weeks
Total loss of hearing, one ear	40 weeks
Total loss of hearing, both ears	200 weeks

(2) The loss of both hands, both arms, both feet, both legs, both eyes, or any two thereof in one accident, in the absence of conclusive proof to the contrary, shall constitute total disability, permanent in character. However, the percentage of permanent disability caused by any single accident or injury shall be so computed as to cover the permanent disability caused by that particular injury without reference to any previous physical ailment or defect or to any injury previously suffered or any permanent disability caused thereby.

(3) No payment under this section shall be in lieu of the separate benefit of medical and hospital services and of any benefits paid under 39-71-701 for temporary total disability.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R.C.M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; re-en. Sec. 2920, R.C.M. 1935; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973; amd. Sec. 2, Ch. 386, L. 1975; R.C.M. 1947, 92-709(part).

Cross-References

"Temporary total disability" defined, 39-71-116.

"Injury" or "injured" defined, 39-71-119.

39-71-706. Compensation for permanent injury to a member less than loss. (1) In all cases of permanent injury to a member less than loss of the member, compensation shall be paid for total temporary disability without limitation as to time under 39-71-701. In addition thereto, indemnity benefits for permanent disability to a member or members shall be proportionate to loss or loss of use of the member or members at the weekly rate provided in 39-71-703. In all other cases of permanent injury less than total not included in the schedule provided for in 39-71-705, the compensation for partial disability shall bear such relation to the periods stated in the schedule provided for in 39-71-705 as the disabilities bear to those produced by the injuries named in the schedule or to partial disability (500 weeks).

(2) Indemnity benefits for permanent total loss of use of a member shall be the same as for loss of the member.

(3) For the purpose of this section and 39-71-705, the complete paralysis of an arm, hand, foot, or leg shall be considered the loss of such member. For the purpose of this section and 39-71-705, the complete paralysis of both arms, both hands, both feet, both legs, or any two of them shall be considered the loss of such members.

(4) No payment under this section shall be in lieu of the separate benefit of medical and hospital services and of any benefits paid under 39-71-701 for temporary total disability.

History: (1), (2), (4)En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R.C.M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; re-en. Sec. 2920, R.C.M. 1935; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973; amd. Sec. 2, Ch. 386, L. 1975; Sec. 92-709, R.C.M. 1947; (3)En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2922, R.C.M. 1921; re-en. Sec. 2922, R.C.M. 1935; Sec. 92-711, R.C.M. 1947; R.C.M. 1947, 92-709(part), 92-711.

Cross-References

"Temporary total disability" defined, 39-71-116.

"Injury" or "injured" defined, 39-71-119.

39-71-707. Compensation for loss of vision. (1) In addition to temporary total disability benefits allowed in this chapter, indemnity benefits for loss of vision, where central visual acuity does not exceed 20/200 in the better eye with correcting lenses or the widest diameter of the visual field subtends an angle no greater than 20 degrees, shall be paid the same as for loss of the eye.

(2) No payment under this section shall be in lieu of the separate benefit of medical and hospital services and of any benefits paid under 39-71-701 for temporary total disability.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R.C.M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; re-en. Sec. 2920, R.C.M. 1935; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973; amd. Sec. 2, Ch. 386, L. 1975; R.C.M. 1947, 92-709(part).

Cross-References

"Temporary total disability" defined, 39-71-116.

39-71-708. Compensation for disfigurement. (1) The division may award proper and equitable indemnity benefits for serious face, head, or neck disfigurement, not to exceed $2,500, in addition to any other indemnity benefits payable under 39-71-705, 39-71-706, or 39-71-707.

(2) No payment under this section shall be in lieu of the separate benefit of medical and hospital services and of any benefits paid under 39-71-701 for temporary total disability.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R.C.M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; re-en. Sec. 2920, R.C.M. 1935; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953;

amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973; amd. Sec. 2, Ch. 386, L. 1975; R.C.M. 1947, 92-709(part).

Cross-References
"Division" defined, 39-71-116.
"Temporary total disability" defined, 39-71-116.

39-71-709. Partial disability benefits — indemnity benefits — election. (1) In addition to temporary total disability benefits allowed in this chapter, a worker whose injury results in partial disability is entitled to receive compensation under 39-71-703 or indemnity benefits under 39-71-705 through 39-71-708.

(2) A worker who has elected to proceed under 39-71-705 through 39-71-708 may withdraw his election at any time and shall be entitled to compensation under 39-71-703 during the remaining period of his disability; provided, however, that he shall not be entitled to receive benefits under both 39-71-703 and 39-71-705 through 39-71-708 during any month.

(3) A worker who has elected to proceed under 39-71-703 may withdraw his election at any time and is entitled to receive indemnity benefits under 39-71-705 through 39-71-708; provided, however, that he shall not be entitled to a greater benefit, including compensation paid under 39-71-703, than he would have received if he had proceeded exclusively under 39-71-705 through 39-71-708 and provided further that he shall not be entitled to receive benefits under both 39-71-703 and 39-71-705 through 39-71-708 during any month.

History: En. 92-709.2 by Sec. 1, Ch. 386, L. 1975; R.C.M. 1947, 92-709.2.

Cross-References
"Temporary total disability" defined, 39-71-116.
"Worker" defined, 39-71-118.
"Injury" or "injured" defined, 39-71-119.

39-71-710. Termination of total disability benefits upon retirement. If a claimant is receiving total disability compensation benefits and the claimant receives retirement social security benefits or disability social security benefits paid to the claimant are converted by law to retirement benefits, the claimant is considered to be retired and no longer in the open labor market. When the claimant is considered retired, the liability of the insurer is ended for payment of such compensation benefits. This section does not apply to permanent partial disability benefits. Medical benefits are expressly reserved to the claimant.

History: En. Sec. 1, Ch. 386, L. 1981.

Cross-References
"Insurer" defined, 39-71-116.
"Permanent partial disability" defined, 39-71-116.

39-71-711 through 39-71-720 reserved.

39-71-721. Compensation for injury causing death. (1) If an injured employee dies and the injury was the proximate cause of such death, then the beneficiary of the deceased, as the case may be, is entitled to the same compensation as though the death occurred immediately following the injury, but the period during which the death benefit is paid shall be reduced by the period during or for which compensation was paid for the injury.

(2) To beneficiaries as defined in subsections (2)(a) through (2)(d) of 39-71-116, weekly compensation benefits for injury causing death are computed at 66 ⅔% of the decedent's wages. The maximum weekly compensation

benefits may not exceed the state's average weekly wage. The minimum weekly compensation for death is 50% of the state's average weekly wage, but in no event may it exceed the decedent's actual wages at the time of his death.

(3) To beneficiaries as defined in subsections (2)(e) and (2)(f) of 39-71-116, weekly benefits must be paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 ⅔% of the decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage.

(4) If the decedent leaves no beneficiary as defined in 39-71-116(2), a lump-sum payment of $3,000 must be paid to the decedent's surviving parent or parents.

(5) If any beneficiary of a deceased employee dies, the right of such beneficiary to compensation under this chapter ceases. Death benefits must be paid to a widow or widower for life or until remarriage, and in the event of remarriage, 2 years' benefits must be paid in a lump sum to the widow or widower.

(6) In all cases, benefits must be paid to beneficiaries, as defined in 39-71-116(2).

History: (1)En. Sec. 12, Ch. 96, L. 1915; re-en. Sec. 2905, R.C.M. 1921; re-en. Sec. 2905, R.C.M. 1935; amd. Sec. 15, Ch. 23, L. 1975; Sec. 92-608, R.C.M. 1947; (2) thru (6)Ap. p. 92-704.1 by Sec. 1, Ch. 203, L. 1973; amd. Sec. 2, Ch. 269, L. 1974; amd. Sec. 1, Ch. 270, L. 1974; amd. Sec. 2, Ch. 272, L. 1974; Sec. 92-704.1, R.C.M. 1947; Ap. p. Sec. 7, Ch. 96, L. 1915; re-en. Sec. 2892, R.C.M. 1921; re-en. Sec. 2892, R.C.M. 1935; amd. Sec. 10, Ch. 23, L. 1975; Sec. 92-502, R.C.M. 1947; R.C.M. 1947, 92-704.1, 92-502, 92-608(1); amd. Sec. 67, Ch. 197, L. 1979.

Cross-References
"Average weekly wage" defined, 39-71-116.
"Beneficiary" defined, 39-71-116.
"Husband" or "widower" defined, 39-71-116.
"Wages" defined, 39-71-116.
"Wife" or "widow" defined, 39-71-116.
"Employee" defined, 39-71-118.
"Injury" or "injured" defined, 39-71-119.

39-71-722. Who constitutes beneficiary to be determined as of date of accident. The question as to who constitutes a beneficiary shall be determined as of the date of the happening of the accident to the employee, whether death shall immediately result therefrom or not.

History: En. Sec. 12, Ch. 96, L. 1915; re-en. Sec. 2905, R.C.M. 1921; re-en. Sec. 2905, R.C.M. 1935; amd. Sec. 15, Ch. 23, L. 1975; R.C.M. 1947, 92-608(3).

Cross-References
"Beneficiary" defined, 39-71-116.
"Employee" defined, 39-71-118.

39-71-723. How compensation to be divided among beneficiaries. Compensation due to beneficiaries shall be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. In cases where beneficiaries are a surviving spouse and stepchildren of such spouse, the compensation shall be divided equally among all beneficiaries. Compensation due to beneficiaries as defined in subsections (2)(e) and (2)(f) of 39-71-116, where there is more than one, shall be divided equitably among them, and the question of dependency and amount thereof shall be a question of fact for determination by the division.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2919, R.C.M. 1921; amd. Sec. 15, Ch. 121, L. 1925; re-en. Sec. 2919, R.C.M. 1935; amd. Sec. 4, Ch. 213, L. 1945; amd. Sec. 7, Ch. 235, L. 1947; amd. Sec. 7, Ch. 253, L. 1955; amd. Sec. 1, Ch. 205, L. 1973; amd. Sec. 3, Ch. 269, L. 1974; R.C.M. 1947, 92-708(part).

Hock –
guardian
req d -

Cross-References
"Division" defined, 39-71-116.

39-71-724. Payment of compensation to beneficiary not a resident of United States. (1) Before payment of compensation to a beneficiary not residing within the United States, satisfactory proof of such relationship as to constitute a beneficiary under this chapter shall be furnished by such beneficiary, duly authenticated under seal of an officer of a court of law in the country where such beneficiary resides, at such times and in such manner as may be required by the division. Such proof shall be conclusive as to the identity of such beneficiary, and any other claim of any other person to any such compensation shall be barred from and after the filing of such proof.

(2) Payment of compensation to a beneficiary not residing within the United States may be made to any plenipotentiary or consul or consular agent within the United States representing the country in which such nonresident beneficiary resides, and the written receipt of such plenipotentiary or consul or consular agent shall acquit the employer, the insurer, or the division, as the case may be.

History: (1)En. Sec. 8, Ch. 96, L. 1915; re-en. Sec. 2896, R.C.M. 1921; re-en. Sec. 2896, R.C.M. 1935; amd. Sec. 11, Ch. 23, L. 1975; Sec. 92-506, R.C.M. 1947; (2)En. Sec. 9, Ch. 96, L. 1915; re-en. Sec. 2897, R.C.M. 1921; re-en. Sec. 2897, R.C.M. 1935; amd. Sec. 12, Ch. 23, L. 1975; Sec. 92-507, R.C.M. 1947; R.C.M. 1947, 92-506, 92-507.

Cross-References
"Beneficiary" defined, 39-71-116.
"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Employer" defined, 39-71-117.

39-71-725. Payment of burial expense. There shall be paid, in case of the death of an employee, which death is the result of an accidental injury arising out of the employment and happening in the course of the employment, the reasonable burial expenses of the employee, not exceeding $1,400, and such payment is not a part of the compensation which might be paid but is a benefit in addition to and separate and apart from compensation.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 2, Ch. 196, L. 1921; re-en. Sec. 2916, R.C.M. 1921; amd. Sec. 13, Ch. 121, L. 1925; re-en. Sec. 2916, R.C.M. 1935; amd. Sec. 1, Ch. 128, L. 1943; amd. Sec. 1, Ch. 213, L. 1945; amd. Sec. 6, Ch. 38, L. 1953; amd. Sec. 5, Ch. 234, L. 1957; amd. Sec. 1, Ch. 194, L. 1974; R.C.M. 1947, 92-705; amd. Sec. 7, Ch. 21, L. 1981.

Compiler's Comments
1981 Amendment: Increased maximum burial expense from $1,100 to $1,400.

Cross-References
"Employee" defined, 39-71-118.
"Injury" or "injured" defined, 39-71-119.

39-71-726. No compensation after death where death not result of injury. If the employee shall die from some cause other than the injury, there shall be no liability for compensation after his death.

History: En. Sec. 12, Ch. 96, L. 1915; re-en. Sec. 2905, R.C.M. 1921; re-en. Sec. 2905, R.C.M. 1935; amd. Sec. 15, Ch. 23, L. 1975; R.C.M. 1947, 92-608(2).

Cross-References
"Employee" defined, 39-71-118.
"Injury" or "injured" defined, 39-71-119.

39-71-727 through 39-71-735 reserved.

39-71-736. Compensation — from what date paid. No compensation may be paid for the first 5 days loss of wages due to an injury. If loss of wages continues for more than 5 days, compensation shall be paid from the date of injury. However, separate benefits of medical and hospital services shall be furnished from the date of injury.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 4, Ch. 196, L. 1921; re-en. Sec. 2918, R.C.M. 1921; amd. Sec. 3, Ch. 177, L. 1929; re-en. Sec. 2918, R.C.M. 1935; amd. Sec. 3, Ch. 213, L. 1945; amd. Sec. 5, Ch. 7, L. 1949; amd. Sec. 1, Ch. 144, L. 1969; amd. Sec. 18, Ch. 23, L. 1975; amd. Sec. 45, Ch. 535, L. 1975; R.C.M. 1947, 92-707; amd. Sec. 9, Ch. 103, L. 1979.

Cross-References

"Wages" defined, 39-71-116.

"Injury" or "injured" defined, 39-71-119.

39-71-737. Compensation to run consecutively — exceptions. (1) Compensation shall run consecutively and not concurrently, and payment shall not be made for two classes of disability over the same period except that indemnity benefits under 39-71-705 through 39-71-708 and temporary total disability benefits may be paid concurrently. However, subject to the provisions of 39-71-741, this section does not prevent:

(a) the payment of a lump-sum advance settlement against projected future permanent partial indemnity benefits while a claimant is receiving temporary total disability benefits; or

(b) a settlement of a combination of different classes of disability benefits into a lump sum or into a combination of periodic and lump-sum payments.

(2) A controversy between a claimant and an insurer regarding a settlement authorized under this section is a dispute for which the workers' compensation judge has jurisdiction to make a determination.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2919, R.C.M. 1921; amd. Sec. 15, Ch. 121, L. 1925; re-en. Sec. 2919, R.C.M. 1935; amd. Sec. 4, Ch. 213, L. 1945; amd. Sec. 7, Ch. 235, L. 1947; amd. Sec. 7, Ch. 253, L. 1955; amd. Sec. 1, Ch. 205, L. 1973; amd. Sec. 3, Ch. 269, L. 1974; R.C.M. 1947, 92-708(part); amd. Sec. 2, Ch. 374, L. 1985; amd. Sec. 1, Ch. 502, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 374 in (1) at end of first sentence, inserted exception clause. Chapter 502 in (1) inserted all language after first sentence; and inserted (2).

39-71-738. Adjustment of compensation in case of further injuries. Should a further accident occur to a worker who is already receiving compensation hereunder or who has been previously the recipient of a payment under this chapter, his further compensation is adjusted according to the other provisions of this chapter and with regard to his past receipt of compensation.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2923, R.C.M. 1921; amd. Sec. 5, Ch. 177, L. 1929; re-en. Sec. 2923, R.C.M. 1935; R.C.M. 1947, 92-712; amd. Sec. 68, Ch. 397, L. 1979.

Cross-References

"Worker" defined, 39-71-118.

39-71-739. Compensation in case of changes in degree of injury. If aggravation, diminution, or termination of disability takes place or is discovered after the rate of compensation is established or compensation is terminated in any case where the maximum payments for disabilities as provided in this chapter are not reached, adjustments may be made to meet such changed conditions by increasing, diminishing, or terminating compensation payments in accordance with the provisions of this chapter.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2924, R.C.M. 1921; amd. Sec. 6, Ch. 177, L. 1929; re-en. Sec. 2924, R.C.M. 1935; R.C.M. 1947, 92-713; amd. Sec. 69, Ch. 397, L. 1979.

39-71-740. Payments — how made in most cases. All payments of compensation as provided in this chapter shall be made at the end of each 2-week period, except as otherwise provided herein.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2925, R.C.M. 1921; re-en. Sec. 2925, R.C.M. 1935; amd. Sec. 9, Ch. 235, L. 1947; amd. Sec. 1, Ch. 197, L. 1961; R.C.M. 1947, 92-714.

39-71-741. Compromise settlements and lump-sum payments — division approval required. (1) The biweekly payments provided for in this chapter may be converted, in whole or in part, into a lump-sum payment. Regardless of the date of the injury or of a prior lump-sum payment, a lump-sum conversion of permanent total biweekly payments awarded or paid after April 15, 1985, must equal the estimated present value of the total unpaid permanent total biweekly payments, assuming interest at 7% per year, compounded annually, unless the conversion improves the financial condition of the worker or his beneficiary, as provided in subsection (2)(b). If the estimated duration of the compensation period is the remaining life expectancy of the claimant or the claimant's beneficiary, the remaining life expectancy must be determined by using the most recent table of life expectancy in years as published by the United States national center for health statistics.

(2) The conversion can only be made upon the written application of the injured worker or the worker's beneficiary, with the concurrence of the insurer, and approval of the conversion rests in the discretion of the division as to the amount of the lump-sum payment and the advisability of the conversion. It is presumed that biweekly payments are in the best interests of the worker or his beneficiary. The approval or award of a lump-sum conversion by the division or the workers' compensation judge must be the exception, not the rule, and may be given only if the worker or his beneficiary demonstrates that his ability to sustain himself financially is more probable with a whole or partial lump-sum conversion than with the biweekly payments and his other available resources. The following procedure must be used by the division and the workers' compensation judge in determining whether a lump-sum conversion of permanent total biweekly payments will be approved or awarded:

(a) The difference between the present discounted value of a lump sum and the future value of the biweekly payments cannot be the only grounds for approving or awarding a lump-sum conversion.

(b) A lump-sum conversion that improves the financial condition of the worker or his beneficiary over what would have been reasonably expected had the worker not been injured or died can be approved or awarded only if the lump-sum conversion is limited to the purchase price to the insurer of an annuity that would yield an amount equal to the biweekly benefits payable over the estimated duration of the compensation period. The worker or his beneficiary must demonstrate the financial condition that would have been reasonably expected, taking into consideration his age, education, work experience, and probable job promotions and pay increases.

(c) If the existing delinquent or outstanding debts are used as grounds for a lump-sum conversion, the worker or his beneficiary must demonstrate through a debt management plan that a lump sum for that purpose is necessary to sustain himself financially.

(d) If a business venture is used as grounds for a lump-sum conversion, the worker or his beneficiary must demonstrate through a business plan that a lump sum for that purpose is necessary to sustain himself financially. The business plan must at least show the feasibility of the business, given the market conditions in the intended market area, and the cash that will be available to him on a biweekly basis after start-up costs and other business expenses are considered throughout the expected life of the venture.

(3) If the division finds that an application for lump-sum conversion does not adequately demonstrate the ability of the worker or his beneficiary to sustain himself financially, the division may order, at the insurer's expense, financial, medical, vocational rehabilitation, educational, or other evaluative studies to determine whether a lump-sum conversion is in the best interest of the worker or his beneficiary.

(4) The division has full power, authority, and jurisdiction to allow and approve compromises of claims under this chapter. All settlements and compromises of compensation provided in this chapter are void without the approval of the division. Approval of the division must be in writing. The division shall directly notify every claimant of any division order approving or denying a claimant's settlement or compromise of a claim.

(5) A controversy between a claimant and an insurer regarding the conversion of biweekly payments into a lump sum is considered a dispute for which the workers' compensation judge has jurisdiction to make a determination.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 9, Ch. 100, L. 1919; re-en. Sec. 2926, R.C.M. 1921; re-en. Sec. 2926, R.C.M. 1935; amd. Sec. 1, Ch. 225, L. 1951; amd. Sec. 8, Ch. 234, L. 1957; amd. Sec. 2, Ch. 197, L. 1961; amd. Sec. 1, Ch. 9, L. 1975; amd. Sec. 1, Ch. 11, L. 1975; amd. Sec. 19, Ch. 23, L. 1975; R.C.M. 1947, 92-715; amd. Sec. 3, Ch. 63, L. 1979; amd. Sec. 1, Ch. 471, L. 1985.

Compiler's Comments

1985 Amendment: In (1) inserted all language after first sentence; in (2) inserted all language after first sentence; inserted (3); and made minor changes in phraseology.

Cross-References

"Beneficiary" defined, 39-71-116.
"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Order" defined, 39-71-116.

39-71-742. Who may receive payment. (1) Where payment is due to a child under 18 years of age or to a person adjudged incompetent, the same shall be made to the parent or to the duly appointed guardian, as the case may be, and the written receipt of such parent or guardian shall acquit the employer, the insurer, or division, as the case may be, of further liability.

(2) In other cases, payment shall be made to the person entitled thereto or to his duly authorized representative.

History: En. Sec. 9, Ch, 96, L. 1915; re-en. Sec. 2898, R.C.M. 1921; amd. Sec. 8, Ch. 121, L. 1925; re-en. Sec. 2898, R.C.M. 1935; amd. Sec. 13, Ch. 23, L. 1975; R.C.M. 1947, 92-508.

Cross-References

"Child" defined, 39-71-116.
"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Employer" defined, 39-71-118.

39-71-743. Assignment or attachment of payments. (1) No payments under this chapter shall be assignable, subject to attachment or garnishment, or be held liable in any way for debts, except as provided in 71-3-1118.

(2) After determination that the claim is covered under the Workers' Compensation Act or Occupational Disease Act of Montana, the liability for

payment of the claim is the responsibility of the appropriate workers' compensation insurer. No fee or charge shall be payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer.

History: **En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2927, R.C.M. 1921; re-en. Sec. 2927, R.C.M. 1935; R.C.M. 1947, 92-801; amd. Sec. 3, Ch. 496, L. 1983.**

Compiler's Comments

1983 Amendment: At end of (1), inserted exception clause; and inserted (2).

Part 8

Compensation for Occupational Deafness

39-71-801. Occupational deafness compensated as provided in part. Regardless of other definitions of injury and time limitations imposed by this chapter, compensation is awarded for occupational deafness as provided in this part.

History: **En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(part); amd. Sec. 70, Ch. 397, L. 1979.**

Cross-References

"Injury" defined, 39-71-119.

39-71-802. Definitions. (1) "Occupational deafness" means permanent partial or permanent total loss of hearing of one or both ears due to prolonged exposure to noise in employment.

(2) "Noise" means sound capable of producing occupational deafness.

(3) "Noisy employment" means employment in the performance of which an employee is subjected to noise.

History: **En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(part).**

Cross-References

"Employee" defined, 39-71-118.

39-71-803. Occupational deafness distinguished from traumatic loss of hearing. Occupational deafness as herein provided is distinguished from traumatic loss of hearing which is governed by the specific loss schedule provided for in 39-71-705.

History: **En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(8).**

Cross-References

"Occupational deafness" defined, 39-71-802.

39-71-804. Compensable loss of hearing confined to certain frequencies. Losses of hearing due to industrial noise for compensation purposes shall be confined to the frequencies of 500, 1,000, and 2,000 cycles per second. Loss of hearing ability for frequency tones above 2,000 cycles per second is not to be considered as constituting disability for hearing.

History: **En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(1)(a).**

Cross-References

"Noise" defined, 39-71-802.

39-71-805. Determining percent of hearing loss. (1) The percent of hearing loss, for purposes of the determination of compensation claims for occupational deafness, shall be calculated as the average in decibels of the thresholds of hearing for the frequencies of 500, 1,000, and 2,000 cycles per second. Pure tone air conduction audiometric instruments, approved by nationally recognized authorities in this field, shall be used for measuring hearing loss. If the losses of hearing average 25 decibels or less in the three frequencies, as measured under ISO Standard 1964, such losses of hearing shall not then constitute any compensable hearing disability. If the losses of hearing average 92 decibels or more in the three frequencies, as measured under ISO Standard 1964, then the same shall constitute and be total or 100% compensable hearing loss.

(2) In measuring hearing impairment, the lowest measured losses in each of the three frequencies shall be added together and divided by three to determine the average decibel loss. For every decibel of loss exceeding 25 decibels, an allowance of 1 ½% shall be made up to the maximum of 100%, which is reached at 92 decibels.

(3) In determining the binaural percentage of loss, the percentage of impairment in the better ear shall be multiplied by five. The resulting figure shall be added to the percentage of impairment in the poorer ear and the sum of the two divided by six. The final percentage shall be representative of the binaural hearing impairment.

(4) Before determining the percentage of hearing impairment, in order to allow for the average amount of hearing loss from nonoccupational causes found in the population at any given age, there shall be deducted from the total average decibel loss one-half decibel for each year of the employee's age over 40 at the time of last exposure to industrial noise.

(5) No consideration shall be given to the question of whether or not the ability of an employee to understand speech is improved by the use of a hearing aid.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(1)(b) thru (f).

Cross-References
"Order" defined, 39-71-116.
"Year" defined, 39-71-116.
"Employee" defined, 39-71-118.
"Noise" defined, 39-71-802.
"Occupational deafness" defined, 39-71-802.

39-71-806. Disability payments not payable for temporary hearing loss due to prolonged exposure to noise. No benefits shall be payable for temporary total or temporary partial disability under this part for loss of hearing due to prolonged exposure to noise.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(2).

Cross-References
"Noise" defined, 39-71-802.

39-71-807. Compensation for wage loss where employee transferred due to occupational deafness. An employee who because of occupational deafness is transferred by his employer to other employment and thereby sustains actual wage loss must be compensated at the rate provided in 39-71-703, not exceeding $3,500 in the aggregate from all employers. "Time of injury", "incurred such injury", or "date of injury" in such case is the date of wage loss.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(3); amd. Sec. 71, Ch. 397, L. 1979.

Cross-References

"Employer" defined, 39-71-117.
"Employee" defined, 39-71-118.
"Injury" or "injured" defined, 39-71-119.
"Occupational deafness" defined, 39-71-802.

39-71-808. Compensation for occupational deafness. (1) Subject to the limitations herein contained, there shall be payable:

(a) for total occupational deafness of one ear, 40 weeks of compensation;

(b) for total occupational deafness of both ears, 200 weeks of compensation; and

(c) for partial occupational deafness, compensation shall bear such relation to that named herein as disabilities bear to the maximum disabilities herein provided.

(2) In cases covered by this section, "time of injury", "incurred such injury", or "date of injury" shall be exclusively the date of occurrence of any of the following events to an employee:

(a) transfer because of occupational deafness to nonnoisy employment by an employer whose employment has caused occupational deafness;

(b) retirement;

(c) termination of the employer-employee relationship;

(d) layoff provided the layoff is complete and continuous for 1 year.

(3) No claim under this section shall be filed, however, until 6 consecutive months of removal from noisy employment after the time of injury, except, that under subsection (2)(d), such 6 consecutive months period may commence within the last 6 months of layoff.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(4).

Cross-References

"Employer" defined, 39-71-117.
"Employee" defined, 39-71-118.
"Injury" or "injured" defined, 38-71-119.
"Noisy employment" defined, 39-71-802.
"Occupational deafness" defined, 39-71-802.

39-71-809. Liability of employer for occupational deafness. An employer shall become liable for the entire occupational deafness to which his employment has contributed; but if previous deafness is established by hearing test or other competent evidence, whether or not the employee was exposed to noise within the 6 months preceding such test, he shall not be liable for previous loss so established nor shall he be liable for any loss for which compensation has previously been paid or awarded.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(9).

Cross-References

"Employer" defined, 39-71-117.
"Employee" defined, 39-71-118.
"Noise" defined, 39-71-802.
"Occupational deafness" defined, 39-71-802.

39-71-810. Employee to have worked ninety days for employer from whom compensation claimed. No payment shall be made to an employee under this part unless he shall have worked in noisy employment for a total period of at least 90 days for the employer from whom he claims compensation.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(6).

Cross-References

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

"Noisy employment" defined, 39-71-802.

39-71-811. Minimum exposure and noise intensity level required. No claim shall be filed, however, unless the employee is exposed 8 hours daily and for a period of at least 90 days as above required to noise intensity levels above 90 decibels.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(10).

Cross-References

"Employee" defined, 39-71-118.

"Noise" defined, 39-71-802.

39-71-812. Limitation on amount of compensation payable to employee under part. Any amount paid to an employee under this part by an employer shall be credited against compensation payable by any employer to such employee for occupational deafness under 39-71-807 and 39-71-808. No employee shall in the aggregate receive greater compensation from any or all employers for occupational deafness than that provided in this part for total occupational deafness.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(7).

Cross-References

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

"Occupational deafness" defined, 39-71-802.

39-71-813. Limitation provisions applicable — when provisions begin to run. The limitation provisions in this chapter control claims arising under this part. Such provisions run from the first date upon which claim may be filed or from the date of subsequent death, provided that no claim may accrue to any dependent unless an award has been issued or liability admitted.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(5); amd. Sec. 72, Ch. 397, L. 1979.

Part 9

Subsequent Injury Received by Vocationally Handicapped

39-71-901. Definitions. As used in this part, the following definitions apply:

(1) "Vocationally handicapped" means a person who has a medically certifiable permanent impairment which is a substantial obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed, considering such factors as the person's age, education, training, experience, and employment rejection.

(2) "Certificate" means documentation issued by the division of workers' compensation to an individual who is vocationally handicapped.

(3) "Fund" means the subsequent injury fund.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(1); amd. Sec. 10, Ch. 103, L. 1979; amd. Sec. 73, Ch. 397, L. 1979.

39-71-902. Fund to receive payment from insurer for each death under chapter — assessment of insurers. (1) In every case of the death of an employee under this chapter, the insurer shall pay to the fund the sum of $1,000. In addition, the division may assess every insurer an amount not to exceed 5% of the compensation paid in Montana in the preceding fiscal year. The assessment must be transmitted annually to the subsequent injury fund by the employer or insurer.

(2) When, in the judgment of the administrator, the amount of money in the subsequent injury fund is such that there is a surplus above and beyond projected liabilities, the administrator may at his discretion suspend or reduce further collection of assessments for a period of time determined by the administrator.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 74, Ch. 397, L. 1979.

Cross-References

"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Employer" defined, 39-71-117.
"Employee" defined, 39-71-118.
"Fund" defined, 39-71-901.

39-71-903. Procedure and practice. When a vocationally handicapped person receives a personal injury, the procedure and practice provided in this chapter applies to all proceedings under this part, except where specifically otherwise provided herein.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 75, Ch. 397, L. 1979.

Cross-References

"Vocationally handicapped" defined, 39-71-901.

39-71-904. Rules for certification. The administrator of the division shall promulgate rules for certification of vocationally handicapped persons.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(4).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
"Division" defined, 39-71-116.
"Vocationally handicapped" defined, 39-71-901.

39-71-905. Certification as vocationally handicapped. A person who wishes to be certified as vocationally handicapped for purposes of this part may apply to the division on forms furnished by the division. The division shall conduct an investigation and shall issue a certificate to a person who, in the division's discretion, meets the requirements for vocationally handicapped certification. An employee who is requesting reemployment may be certified as vocationally handicapped. An employee who is not employed at the time of application for certification must be certified as vocationally handicapped before entering new employment in order for the new employer to receive the benefits of this part.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(2); amd. Sec. 11, Ch. 103, L. 1979.

Cross-References

"Division" defined, 39-71-116.
"Employer" defined, 39-71-117.
"Employee" defined, 39-71-118.
"Certificate" defined, 39-71-901.
"Vocationally handicapped" defined, 39-71-901.

39-71-906. Employer hiring or retaining certified vocationally handicapped person to file information with division — effect of failure to file. Upon commencement of employment or retention in employment of a certified vocationally handicapped person, the employer shall submit to the division, on forms furnished by the division, all pertinent information requested by the division. The division shall acknowledge receipt of the information. Failure to file the required information with the division within 60 days after the first day of the vocationally handicapped person's employment or retention in employment precludes the employer from the protection and benefits of this part unless the information is filed before an injury for which benefits are payable under this part.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(3); amd. Sec. 12, Ch. 103, L. 1979.

Cross-References

"Division" defined, 39-71-116.
"Employer" defined, 39-71-117.
"Injury" or "injured" defined, 39-71-119.
"Vocationally handicapped" defined, 39-71-901.

39-71-907. Certified vocationally handicapped person to be compensated for injury as provided by chapter — employer liability for compensation limited. A person certified as vocationally handicapped who receives a personal injury arising out of and in the course of his employment and resulting in death or disability must be paid compensation in the manner and to the extent provided in this chapter or, in case of his death resulting from such injury, the compensation must be paid to his beneficiaries or dependents. The liability of the employer for payment of compensation, for furnished medical care, and burial as provided in this chapter is limited to those benefits occurring during the period of 104 weeks after the date of injury. Thereafter, all compensation and the cost of all medical care and burial is the liability of the fund.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(5); amd. Sec. 76, Ch. 397, L. 1979.

Cross-References

"Employer" defined, 39-71-117.
"Injury" or "injured" defined, 39-71-119.
"Vocationally handicapped" defined, 39-71-901.

39-71-908. Notification of fund of its potential liability under part — review by fund. Not less than 90 or more than 150 days before the expiration of 104 weeks after the date of injury, the employer, carrier, or the industrial insurance fund, as the case may be, shall notify the fund whether it is likely that compensation may be payable beyond a period of 104 weeks after the date of the injury. The fund thereafter may review, at reasonable times, such information as the employer, carrier, or industrial insurance fund has regarding the accident and the nature and extent of the injury and disability.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 77, Ch. 397, L. 1979.

Cross-References

"Employer" defined, 39-71-117.
"Injury" or "injured" defined, 39-71-119.
"Fund" defined, 39-71-901.

39-71-909. Effect of fund's failure to give notification of its intent to dispute liability — subsequent notification by fund authorized. If the fund does not notify the carrier of its intent to dispute the payment of compensation, medical, and burial benefits, the employer, carrier, or industrial insurance fund shall continue to make payments on behalf of the fund and shall be reimbursed by the fund for all benefits paid that pertain to the period beyond 104 weeks after the date of the injury. However, at any time subsequent to 104 weeks after the date of injury, the fund may notify the carrier of a dispute as to payment of benefits. The liability of the fund to reimburse the employer, carrier, or the industrial insurance fund shall be suspended 30 days thereafter until the controversy is determined.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(7).

Cross-References

"Employer" defined, 39-71-117.

"Injury" or "injured" defined, 39-71-119.

"Fund" defined, 39-71-901.

39-71-910. Procedure for resolving disputes as to liability under part. (1) If an employee was employed or retained in employment under the provisions of this part and a dispute or controversy arises as to payment of benefits or the liability therefor, the division shall hold a hearing and resolve all disputes. On motion made in writing by the employer, carrier, or industrial insurance fund, the administrator shall join the fund as a party defendant.

(2) The division, within 5 days of the entry of an order joining the fund as a party defendant, shall give the fund written notice thereof not less than 20 days before the date of hearing and shall include the name of the employee and the employer and the date of the alleged injury or disability. The fund named as a defendant shall have 10 days after the date of notification to file objections to being named as a party defendant. On the date of the hearing at which the liability of the parties is determined, the hearing examiner first shall hear arguments and take evidence concerning the joinder as party defendant. If the fund has filed timely objection and if argument and evidence warrant, the hearing examiner shall grant a motion to dismiss.

(3) At the time of the hearing, the employer and fund may appear, cross-examine witnesses, give evidence, and defend both on the issue of liability of the employer to the employee and on the issue of the liability of the fund.

(4) The hearing examiner shall make findings of fact and conclusions of law determining the respective liability of the employer and the fund.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(9) thru (12); amd. Sec. 78, Ch. 397, L. 1979.

Cross-References

"Division" defined, 39-71-116.

"Order" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

"Injury" or "injured" defined, 39-71-119.

"Fund" defined, 39-71-901.

39-71-911. Obligation to make payments on behalf of fund not an independent liability. The obligation imposed by this part on the employer, carrier, or industrial insurance fund to make payments on behalf of the fund does not impose an independent liability on the employer, carrier, or industrial insurance fund.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part).

Cross-References

"Employer" defined, 39-71-117.

"Fund" defined, 39-71-901.

39-71-912. Reimbursement to be promptly made. After the right to reimbursement has been established, reimbursement payment shall be made promptly on a proper showing every 6 months.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part).

39-71-913. Payments by fund directly to persons entitled. If the employer, carrier, or the industrial insurance fund does not make the payments on behalf of the fund, the fund may make the payments directly to the persons entitled to the payments.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part).

Cross-References

"Employer" defined, 39-71-117.

"Fund" defined, 39-71-901.

39-71-914. Conversion of benefits payable from fund to lump sum. Benefits payable from the fund may be converted into a lump-sum payment only upon a substantial showing for an equitable cause, the advisability of the lump-sum payment to be determined and approved by the administrator of the division.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part).

Cross-References

"Division" defined, 39-71-116.

"Fund" defined, 39-71-901.

Part 10

Referral of Disabled Workers for Vocational Rehabilitation

39-71-1001. Referral of disabled workers to department of social and rehabilitation services for vocational rehabilitation. The division shall refer to the department of social and rehabilitation services workers who have become permanently disabled as the result of injuries sustained within the scope and course of employment by an employer enrolled under the Workers' Compensation Act and who, in the opinion of the division, can be vocationally rehabilitated. The department of social and rehabilitation services shall provide for the vocational rehabilitation of the injured workers under the provisions of Title 53, chapter 7, parts 1 and 2.

History: En. Sec. 1, Ch. 21, L. 1961; amd. Sec. 1, Ch. 221, L. 1963; amd. Sec. 83, Ch. 23, L. 1975; R.C.M. 1947, 92-1401; amd. Sec. 79, Ch. 397, L. 1979.

Cross-References

"Division" defined, 39-71-116.

39-71-1002. Certification of department's determination to division — review of award. When the department of social and rehabilitation services has provided all feasible vocational rehabilitation to an injured worker or has determined that vocational rehabilitation is not possible or feasible, it shall certify its determination to the division, at which time the division shall reconsider and review any previous award of compensation to the injured worker which is then in effect.

History: En. Sec. 2, Ch. 21, L. 1961; amd. Sec. 84, Ch. 23, L. 1975; R.C.M. 1947, 92-1402.

Cross-References

"Division" defined, 39-71-116.

39-71-1003. Eligibility for benefits under chapter not affected — other expenses payable. The eligibility of any injured worker to receive other benefits under the Workers' Compensation Act is in no way affected by his entrance upon a course of vocational rehabilitation as herein provided. A person undergoing vocational rehabilitation must be paid temporary total disability benefits. In addition thereto, he may be paid, upon the certification of the department of social and rehabilitation services from funds herein provided:

(1) his actual and necessary travel expenses from his place of residence to the place of training and return;

(2) his living expenses while in training in an amount not in excess of $50 per week; and

(3) his expenses for tuition, books, and necessary equipment in training.

History: En. Sec. 3, Ch. 21, L. 1961; amd. Sec. 1, Ch. 363, L. 1971; R.C.M. 1947, 92-1403; amd. Sec. 80, Ch. 397, L. 1979; amd. Sec. 3, Ch. 374, L. 1985.

Compiler's Comments

1985 Amendment: In introductory language inserted second sentence and made minor changes in phraseology.

39-71-1004. Industrial accident rehabilitation account. (1) The payments provided in 39-71-1003 shall be made from the industrial accident rehabilitation account in the state special revenue fund. Payments to the account shall be made on or before July 1 of each year as follows:

(a) by each employer operating under the provisions of plan No. 1 of the Workers' Compensation Act, an amount to be assessed by the division, not exceeding 1% of the compensation paid to the employer's injured employees in Montana for the preceding fiscal year;

(b) by each insurer insuring employers under the provisions of plan No. 2 of the Workers' Compensation Act, an amount to be assessed by the division, not exceeding 1% of the compensation paid to injured employees of its insured in Montana during the preceding fiscal year;

(c) by the division, an amount to be determined by the division, not exceeding 1% of the compensation paid to injured employees in Montana from the industrial insurance expendable trust fund and the occupational disease expendable trust fund for the preceding fiscal year.

(2) Separate accounts of the amounts collected and disbursements made from the industrial accident rehabilitation account in the state special revenue fund shall be kept for each of the plans. If in any fiscal year the amount collected from the employers under any plan exceeds the amount of payments for employees of the employers under such plan, the assessment against the employers under such plan for the following year shall be reduced.

(3) The payments herein provided for shall be made to the division, which shall credit the sums paid to the industrial accident rehabilitation account which shall be in the custody of the state treasurer. Disbursements from the account shall be made after approval by the department of social and rehabilitation services and upon audit and approval by the department of administration.

(4) No part of the funds allocated or contributed as herein provided and contemplated shall be used in payment of administrative expenses of the division or department of social and rehabilitation services.

History: En. Sec. 7, Ch. 21, L. 1961; amd. Sec. 3, Ch. 221, L. 1963; amd. Sec. 85, Ch. 23, L. 1975; R.C.M. 1947, 92-1406; amd. Sec. 2, Ch. 283, L. 1983.

Compiler's Comments

1983 Amendment: In introductory clause of (1) and in (2), substituted "state special revenue fund" for "agency fund"; and in (1)(c), substituted "expendable trust fund" for "account in the agency fund" twice.

Cross-References

"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Year" defined, 39-71-116.

39-71-1005. Required rehabilitation. (1) The division may, under the provisions and procedures set forth in this section, require a claimant to pursue a vocational rehabilitation course in order to be entitled to continued workers' compensation benefits.

(2) The division shall make a determination, on a case-by-case basis, of the availability and appropriateness of a rehabilitation program for a claimant receiving workers' compensation benefits. The determination shall be made only after consultation with the department of social and rehabilitation services and division-sanctioned rehabilitation committees that are able to provide competent information regarding the rehabilitation of a claimant.

(3) If the division determines that a rehabilitation program is feasible and appropriate for a claimant receiving workers' compensation benefits, the division must require the claimant to enter into the program. If a claimant refuses to enter the program, the claimant's biweekly benefits may be ordered terminated.

(4) Any order terminating benefits may only be issued after the claimant has an opportunity for a hearing before a workers' compensation judge regarding the feasibility and appropriateness of the rehabilitation program. After the hearing, the judge may approve or deny the division's determination regarding the feasibility or appropriateness of the proposed rehabilitation program.

(5) If a claimant does not request a hearing and benefits are terminated, and subsequently the claimant requests a hearing, the claimant is entitled to retroactive weekly benefits for a maximum of 8 weeks from the date of request for hearing, and to continued weekly benefits pending a decision by the workers' compensation judge.

History: En. Sec. 1, Ch. 123, L. 1979.

Cross-References

"Division" defined, 39-71-116.
"Order" defined, 39-71-116.

Parts 11 through 20 reserved

Part 21

Compensation Plan Number One

39-71-2101. General requirements for electing coverage under plan. An employer may elect to be bound by compensation plan No. 1 upon furnishing satisfactory proof to the division of his solvency and financial ability to pay the compensation and benefits in this chapter provided for and to discharge all liabilities which are reasonably likely to be incurred by him during the fiscal year for which such election is effective and may, by order of the division, make such payments directly to his employees as they may become entitled to receive under the terms and conditions of this chapter.

History: **En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2970, R.C.M. 1921; re-en. Sec. 2970, R.C.M. 1935; amd. Sec. 2, Ch. 443, L. 1973; R.C.M. 1947, 92-901; amd. Sec. 81, Ch. 397, L. 1979.**

Cross-References
"Division" defined, 39-71-116.
"Order" defined, 39-71-116.
"Employer" defined, 39-71-117.

39-71-2102. Proof of solvency to be filed. Every employer who has elected to be bound by compensation plan No. 1 shall file proof of his solvency within the time and in the form as may be prescribed by the rules or orders of the division.

History: **En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2971, R.C.M. 1921; amd. Sec. 5, Ch. 139, L. 1931; re-en. Sec. 2971, R.C.M. 1935; amd. Sec. 3, Ch. 176, L. 1957; amd. Sec. 169, Ch. 147, L. 1963; amd. Sec. 1, Ch. 183, L. 1965; amd. Sec. 1, Ch. 170, L. 1969; amd. Sec. 1, Ch. 143, L. 1971; amd. Sec. 3, Ch. 443, L. 1973; amd. Sec. 2, Ch. 318, L. 1975; R.C.M. 1947, 92-902.**

Cross-References
"Division" defined, 39-71-116.
"Employer" defined, 39-71-117.

39-71-2103. Employer permitted to carry on business and settle directly with employee — individual liability. (1) If such employer making such election shall be found by the division to have the requisite financial ability to pay the compensation and benefits in this chapter provided for, then the division shall grant to the employer permission to carry on his business for the fiscal year within which such election is made and such proof filed, or the remaining portion of such fiscal year, and to make such payments directly to his employees as they may become entitled to receive the same.

(2) Each individual employer in an association, corporation, or organization of employers given permission by the division to operate as self-insured under plan No. 1 of this chapter is jointly and severally liable for all obligations incurred by the association, corporation, or organization under this chapter. An association, corporation, or organization of employers given permission to operate as self-insured must maintain excess liability coverage in amounts and under such conditions as provided by rules of the division.

History: **En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2972, R.C.M. 1921; re-en. Sec. 2972, R.C.M. 1935; amd. Sec. 51, Ch. 23, L. 1975; R.C.M. 1947, 92-903(part); amd. Sec. 2, Ch. 480, L. 1985.**

Compiler's Comments
1985 Amendment: Inserted (2).

Cross-References
"Division" defined, 39-71-116.
"Employer" defined, 39-71-117.

39-71-2104. Renewal of application. Every employer, so long as he continues in his employment and so long as he continues to be bound by compensation plan No. 1, shall, at least 30 days before the expiration of each fiscal year, renew his application to be permitted to continue to make such payments as aforesaid directly to his employees for the next ensuing fiscal year, and under like circumstances as those mentioned for the granting of such permission upon such first application, the division may renew the same from year to year.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2972, R.C.M. 1921; re-en. Sec. 2972, R.C.M. 1935; amd. Sec. 51, Ch. 23, L. 1975; R.C.M. 1947, 92-903(part).

Cross-References
"Division" defined, 39-71-116.
"Employer" defined, 39-71-117.

39-71-2105. Additional proof of solvency — revocation of order. The division may at any time require from any employer acting under compensation plan No. 1 additional proof of solvency and financial ability to pay the compensation provided by this chapter and may at any time, upon notice to such employer of not less than 10 or more than 20 days, after and upon a full hearing, revoke any order or approval theretofore made.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2973, R.C.M. 1921; re-en. Sec. 2973, R.C.M. 1935; amd. Sec. 52, Ch. 23, L. 1975; R.C.M. 1947, 92-904.

Cross-References
"Division" defined, 39-71-116.
"Order" defined, 39-71-116.
"Employer" defined, 39-71-117.

39-71-2106. Requiring security of employer. (1) If the division finds that an employer has lost his solvency or financial ability to pay the compensation herein provided to be paid which might reasonably be expected to be chargeable to the employer during the fiscal year to be covered by the permission or that the employer is an association, corporation, or organization of individual employers seeking permission to operate under compensation plan No. 1, the division must require the employer, before granting to him permission or before continuing or engaging in such employment subject to the provisions of compensation plan No. 1, to give security for the payment of compensation, which security must be in such an amount as the division finds is reasonable and necessary to meet all liabilities of the employer which may reasonably and ordinarily be expected to accrue during the fiscal year.

(2) The security must be deposited with the division and may be a certain estimated percent of the employer's last preceding annual payroll or a certain percent of the established amount of his annual payroll for the fiscal year; or the security may be in the form of a bond or undertaking executed to the division in the amount to be fixed by it with two or more sufficient sureties, which undertaking must be conditioned that the employer will well and truly pay or cause to be paid all sums and amounts for which the employer shall become liable under the terms of this chapter to his employees during the fiscal year; or such security may consist of any state, county, municipal, or school district bonds or the bonds or evidence of indebtedness of any individuals or corporations which the division deems solvent; and every such deposit and the character and amount of such securities shall at all times be subject to approval, revision, or change by the division as in its judgment may be required, and upon proof of the final payment of the liability for which such securities are given, such securities or any remaining part thereof shall be returned to the depositor.

(3) The division is liable for the value and safekeeping of all such deposits or securities and shall, at any time, upon demand of a bondsman or the depositor, account for the same and the earnings thereof.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2974, R.C.M. 1921; re-en. Sec. 2974, R.C.M. 1935; amd. Sec. 53, Ch. 23, L. 1975; R.C.M. 1947, 92-905; amd. Sec. 3, Ch. 480, L. 1985.

Compiler's Comments
1985 Amendment: In (1), near beginning after "employer", substituted "has lost his solvency or financial ability to pay" for "does not have the financial responsibility for the payment of", near middle after "covered by the permission",

inserted "or that the employer is an association, corporation, or organization of individual employers seeking permission to operate under compensation plan No. 1", and near end after "give security for", substituted "the payment of compensation" for "such payment".

Cross-References
"Division" defined, 39-71-116.
"Payroll" defined, 39-71-116.
"Employer" defined, 39-71-117.

39-71-2107. When employer to make deposit or security to guarantee payment of compensation. Within 30 days after the happening of an accident where death or the nature of the injury renders the amount of future payments certain or reasonably certain, the employer shall make a deposit or give security, as herein defined, with the division for the protection and guaranty of the payment of such liability in such sum as the division may direct. However, if sufficient securities are already on deposit with the division or if the division determines that the employer has sufficient financial responsibility to meet the liability of the employer, together with other liabilities already accrued, no such additional deposit or security shall be demanded.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2976, R.C.M. 1921; re-en. Sec. 2976, R.C.M. 1935; amd. Sec. 55, Ch. 23, L. 1975; R.C.M. 1947, 92-907.

Cross-References
"Division" defined, 39-71-116.
"Employer" defined, 39-71-117.

39-71-2108. Failure of employer to pay compensation — duty of division. Upon the failure of the employer to pay any compensation provided for in this chapter upon the terms and in the amounts and at the times when the same becomes due and payable, the division shall, upon demand of the person to whom compensation is due, apply any deposits made with the division to the payment of the same, and the division shall take the proper steps to convert any securities on deposit with the division or sufficient thereof into cash and to pay the same upon the liabilities of the employer accruing under the terms of this chapter, and the division shall, when necessary, collect and enforce the collection of the liability of all sureties upon any bonds which may be given by the employer to insure the payment of his liability. To these ends and for these purposes, the division shall be deemed to be the owner of the deposit and security and the obligee in the bond in trust for the purposes and may proceed in its own name to recover upon the bonds or foreclose and liquidate the securities.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2975, R.C.M. 1921; re-en. Sec. 2975, R.C.M. 1935; amd. Sec. 54, Ch. 23, L. 1975; R.C.M. 1947, 92-906.

Cross-References
"Division" defined, 39-71-116.
"Employer" defined, 39-71-117.

39-71-2109. When employer may be relieved from liability. Any employer bound by compensation plan No. 1 against whom liability may exist for compensation for permanent benefits under this chapter may, with the approval of the division, be relieved therefrom by:

(1) depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists for permanent total benefits, assuming interest at 7% per annum, compounded annually, with the division; or

(2) depositing with the division the sum of the unpaid permanent partial benefits for which such liability exists.

History: **En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2977, R.C.M. 1921; re-en. Sec. 2977, R.C.M. 1935; amd. Sec. 56, Ch. 23, L. 1975; R.C.M. 1947, 92-908; amd. Sec. 2, Ch. 471, L. 1985.**

Compiler's Comments

1985 Amendment: At beginning of section, after "Any employer", inserted "bound by compensation plan No. 1", and after "for compensation" inserted "for permanent benefits"; in (1), after "such liability exists", inserted "for permanent total benefits" and substituted "7% per annum, compounded annually" for "5% per annum"; in (2) substituted present language for "purchasing an annuity within the limitations provided by law in any insurance company granting annuities and authorized to transact business in this state, subject to the approval of the division".

Cross-References

"Division" defined, 39-71-116.

"Employer" defined, 39-71-117.

Part 22

Compensation Plan Number Two

39-71-2201. Election to be bound by plan. (1) Any employer except those specified in 39-71-403 may, by filing his election to become bound by compensation plan No. 2, insure his liability to pay the compensation and benefits provided by this chapter with any insurance company authorized to transact such business in this state.

(2) Any employer electing to become bound by compensation plan No. 2 shall make his election on the form and in the manner prescribed by the division.

History: **(1)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2978, R.C.M. 1921; re-en. Sec. 2978, R.C.M. 1935; amd. Sec. 1, Ch. 49, L. 1961; Sec. 92-1001, R.C.M. 1947; (2)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2979, R.C.M. 1921; re-en. Sec. 2979, R.C.M. 1935; amd. Sec. 2, Ch. 49, L. 1961; amd. Sec. 57, Ch. 23, L. 1975; amd. Sec. 1, Ch. 324, L. 1977; Sec. 92-1002, R.C.M. 1947; R.C.M. 1947, 91-1001, 92-1002(1); amd. Sec. 82, Ch. 397, L. 1979.**

Cross-References

"Division" defined, 39-71-116.

"Employer" defined, 39-71-117.

39-71-2202. Policies made subject to chapter. Every policy for insurance written under compensation plan No. 2 shall be considered to be made subject to the provisions of this chapter.

History: **En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2982, R.C.M. 1921; re-en. Sec. 2982, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1951; amd. Sec. 5, Ch. 176, L. 1957; amd. Sec. 1, Ch. 203, L. 1959; amd. Sec. 170, Ch. 147, L. 1963; amd. Sec. 1, Ch. 142, L. 1971; amd. Sec. 59, Ch. 23, L. 1975; amd. Sec. 3, Ch. 318, L. 1975; R.C.M. 1947, 92-1005; amd. Sec. 13, Ch. 103, L. 1979.**

39-71-2203. Content of policies — policies subject to approval, change, or revision by division. (1) All policies insuring the payment of compensation under this chapter must contain a clause to the effect that, as between the employee and the insurer, the notice to or knowledge of the occurrence of the injury on the part of the insured shall be deemed notice or knowledge, as the case may be, on the part of the insurer; that jurisdiction of the insured for the purpose of this chapter shall be jurisdiction of the insurer; and that the insurer shall in all things be bound by and subject to the awards, orders, judgments, or decrees rendered against such insured.

(2) No such policy shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to compensation all

the installments of compensation or other payments in this chapter provided for and that the obligation shall not be affected by any default of the insured after the injury or by any default in the giving of any notice required by such policy or by this chapter or otherwise. Such agreement shall be construed to be a direct promise by the insured to the person entitled to compensation.

(3) Every policy or contract insuring against liability for compensation under compensation plan No. 2 must contain a clause to the effect that the insurer shall be directly and primarily liable to and will pay directly to the employee or in case of death to his beneficiaries or major or minor dependents, the compensation, if any, for which the employer is liable.

(4) Every such policy shall at all times be subject to approval, change, or revision by the division and shall contain the clauses, agreements, and promises required by this chapter.

History: (1)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2980, R.C.M. 1921; amd. Sec. 6, Ch. 139, L. 1931; re-en. Sec. 2980, R.C.M. 1935; amd. Sec. 4, Ch. 176, L. 1957; Sec. 92-1003, R.C.M. 1947; (2)En. Sec. 35, Ch. 96, L. 1915; amd. Sec. 10, Ch. 100, L. 1919; re-en. Sec. 2981, R.C.M. 1921; amd. Sec. 11, Ch. 177, L. 1929; re-en. Sec. 2981, R.C.M. 1935; amd. Sec. 1, Ch. 141, L. 1971; amd. Sec. 58, Ch. 23, L. 1975; Sec. 92-1004, R.C.M. 1947; (3), (4)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2988, R.C.M. 1921; re-en. Sec. 2988, R.C.M. 1935; Sec. 92-1011, R.C.M. 1947; R.C.M. 1947, 92-1003, 92-1004(part), 92-1011.

Cross-References

Policies to provide for freedom of choice of practitioners — professional practice not enlarged, 33-22-111.

"Insurer" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

"Injury" or "injured" defined, 39-71-119.

39-71-2204. Insurer to submit notice of coverage within thirty days — penalty for failure. (1) The insurer shall, within 30 days after the issuance of the policy of workers' compensation insurance, submit to the division the notice of coverage stating the effective date of the policy insuring the employer and such other information as may be required by the division.

(2) The division may, in its discretion, assess a penalty of no more than $200 against an insurer which as a general business practice does not comply with the 30-day notice requirement as set forth in subsection (1) of this section.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2979, R.C.M. 1921; re-en. Sec. 2979, R.C.M. 1935; amd. Sec. 2, Ch. 49, L. 1961; amd. Sec. 57, Ch. 23, L. 1975; amd. Sec. 1, Ch. 324, L. 1977; R.C.M. 1947, 92-1002(part).

Cross-References

"Division" defined, 39-71-116.

"Insurer" defined, 39-71-116.

"Employer" defined, 39-71-117.

39-71-2205. Policy remains in effect until canceled or replaced — twenty-day notification of cancellation required. The policy remains in effect until canceled, and cancellation may take effect only by written notice to the named insured and to the division at least 20 days prior to the date of cancellation. However, the policy terminates on the effective date of a replacement or succeeding workers' compensation insurance policy issued to the insured. Nothing in this section prevents an insurer from canceling a policy of workers' compensation insurance before a replacement policy is issued to the insured.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2979, R.C.M. 1921; re-en. Sec. 2979, R.C.M. 1935; amd. Sec. 2, Ch. 49, L. 1961; amd. Sec. 57, Ch. 23, L. 1975; amd. Sec. 1, Ch. 324, L. 1977; R.C.M. 1947, 92-1002(part).

Cross-References
"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.

39-71-2206. Deposits by insurer with division to guarantee payment of liability. (1) Before issuance of any policy by an insurer as herein authorized, the insurer must deposit with the division bonds of the United States or the state of Montana or of any school district, county, city, or town in the state of Montana or a corporate surety bond made out to and approved by the division in an amount not less than $5,000 or more than $100,000, as the division may determine. If any insurer fails to discharge any liability after the amount thereof is determined by the division and within the time limited by the division, the division shall convert the bonds or such part thereof as is necessary into cash and from the proceeds liquidate such liability, and thereafter the insurer must make an additional deposit to meet any deficiency caused thereby. It is intended to give the division the discretion in the matter of whether an insurer has failed to discharge any liability.

(2) Within 30 days of the happening of an accident where death or the nature of the injury renders the amount of future payments certain or reasonably certain, the insurer shall make a deposit, as herein defined, with the division for the protection and guarantee of the payment of such liability in such sum as the division may direct. However, if the division considers the amount on deposit by the insurer under the provisions of subsection (1) of this section sufficient to cover all liabilities of the insurer, then no further deposit may be required.

(3) Any deposit made under the provisions of compensation plan No. 2 must be held in trust by the division as security for the payment of the liability for which the deposit was made. Such deposit may be reduced from time to time with the permission of the division as the payment of the liability of the insurer may reduce the amount required to be on deposit. Such deposit may be changed or renewed when desired by the depositor by withdrawing the same or any part thereof and substituting other deposits therefor. Upon proof of the final payment of the liability for which such deposit was made, any deposit remaining must be returned to the depositor. All earnings made by such deposit must first be applied upon any liability of the depositors, and if no such liability exists, then such earnings must upon demand be delivered to such depositor. The division and its bondsmen are liable for the value and safekeeping of such deposit and shall at any time, upon demand of a depositor, account for the same and the earnings thereof.

History: (1)En. Sec. 35, Ch. 96, L. 1915; amd. Sec. 10, Ch. 100, L. 1919; re-en. Sec. 2981, R.C.M. 1921; amd. Sec. 11, Ch. 177, L. 1929; re-en. Sec. 2981, R.C.M. 1935; amd. Sec. 1, Ch. 141, L. 1971; amd. Sec. 58, Ch. 23, L. 1975; Sec. 92-1004, R.C.M. 1947; (2)En. Sec. 35, Ch. 96, L. 1915; amd. Sec. 11, Ch. 100, L. 1919; re-en. Sec. 2984, R.C.M. 1921; re-en. Sec. 2984, R.C.M. 1935; amd. Sec. 61, Ch. 23, L. 1975; Sec. 92-1007, R.C.M. 1947; (3)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2989, R.C.M. 1921; re-en. Sec. 2989, R.C.M. 1935; Sec. 92-1012, R.C.M. 1947; R.C.M. 1947, 92-1004(part), 92-1007, 92-1012; amd. Sec. 83, Ch. 397, L. 1979.

Cross-References
"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Injury" or "injured" defined, 39-71-119.

39-71-2207. How insurer relieved from liability. Any compensation plan No. 2 insurer against whom liability may exist for compensation for permanent benefits under this chapter may, with the approval of the division, be relieved therefrom by:

(1) depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists for permanent total benefits, assuming interest at 7% per annum, compounded annually, with the division; or

(2) depositing with the division the sum of the unpaid permanent partial benefits for which such liability exists.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2985, R.C.M. 1921; re-en. Sec. 2985, R.C.M. 1935; amd. Sec. 62, Ch. 23, L. 1975; R.C.M. 1947, 92-1008; amd. Sec. 3, Ch. 471, L. 1985.

Compiler's Comments

1985 Amendment: At beginning of section inserted "compensation plan No. 2", and after "for compensation" inserted "for permanent benefits"; in (1), after "such liability exists", inserted "for permanent total benefits" and substituted "7% per annum, compounded annually" for "5% per annum"; in (2) substituted present language for "purchasing an annuity within the limitations provided by law in any insurance company granting annuities and authorized to transact business in this state, subject to the approval of the division".

Cross-References

"Division" defined, 39-71-116.

"Insurer" defined, 39-71-116.

Part 23

Compensation Plan Number Three

39-71-2301. Intent and purpose of plan. It is the intent and purpose of compensation plan No. 3 to allow an employer to insure with a state operated workers' compensation insurance system, known as the state compensation insurance fund or state fund. The state fund shall be administered by the division of workers' compensation and shall pay all benefits under this chapter to the employees of an employer who elects coverage with the state fund.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2993, R.C.M. 1921; re-en. Sec. 2993, R.C.M. 1935; amd. Sec. 4, Ch. 123, L. 1957; amd. Sec. 176, Ch. 147, L. 1963; amd. Sec. 22, Ch. 329, L. 1969; amd. Sec. 69, Ch. 23, L. 1975; amd. Sec. 1, Ch. 171, L. 1975; R.C.M. 1947, 92-1105(1); amd. Sec. 14, Ch. 103, L. 1979.

Cross-References

"Division" defined, 39-71-116.

"Employer" defined, 39-71-117.

39-71-2302. General requirements for electing coverage under plan. Every employer subject to the provisions of compensation plan No. 3 shall at the times and in the manner prescribed by the division pay to the division a premium based on a percentage of his payroll as determined by the division, which shall be a member of a rating organization in accordance with the provisions of this chapter.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2990, R.C.M. 1921; re-en. Sec. 2990, R.C.M. 1935; amd. Sec. 1, Ch. 123, L. 1957; amd. Sec. 175, Ch. 147, L. 1963; amd. Sec. 1, Ch. 233, L. 1969; amd. Sec. 20, Ch. 329, L. 1969; amd. Sec. 65, Ch. 23, L. 1975; R.C.M. 1947, 92-1101.

Cross-References

"Division" defined, 39-71-116.

"Payroll" defined, 39-71-116.

"Employer" defined, 39-71-117.

39-71-2303. Manner of electing — contract or policy of insurance — payment of premium. The division shall prescribe the procedure by which employers may elect to be bound by compensation plan No. 3, the effective time of such election, and the manner in which such election is terminated for reasons other than default in payment of premiums. Every employer electing to be bound by compensation plan No. 3 shall receive from the division a contract or policy of insurance in a form approved by the division. The premium thereon shall be paid by the employer to the division at such times as the division shall prescribe and shall be paid over by the division to the state treasurer to the credit of the industrial insurance expendable trust fund.

History: En. Sec. 40, Ch. 96, L. 1915; amd. Sec. 6, Ch. 196, L. 1921; re-en. Sec. 2991, R.C.M. 1921; re-en. Sec. 2991, R.C.M. 1935; amd. Sec. 2, Ch. 123, L. 1957; amd. Sec. 178, Ch. 147, L. 1963; amd. Sec. 2, Ch. 233, L. 1969; amd. Sec. 67, Ch. 23, L. 1975; R.C.M. 1947, 92-1103; amd. Sec. 3, Ch. 283, L. 1983.

Compiler's Comments

1983 Amendment: At end of section, substituted "expendable trust fund" for "account in the agency fund".

Cross-References

"Division" defined, 39-71-116.

"Employer" defined, 39-71-117.

39-71-2304. Determination of rates and classifications by division. (1) The division is hereby given full power and authority to determine premium rates and classifications as in its judgment and experience and as a member of a rating organization as is otherwise provided for in this chapter may be necessary or expedient, provided that no change in the classification or rates prescribed shall be effective until 30 days after the date of the order making such change.

(2) The industrial insurance program shall be neither more nor less than self-supporting. Employments affected by the provisions hereof shall be divided by the division, as a member of a rating organization, into classes, whose rates may be readjusted at such times as the division as a member of such rating organization may actuarially determine. Separate accounts shall be kept of the amounts collected and expended in each class for actuarially determining rates, but for payment of compensation and dividends, the industrial insurance expendable trust fund shall be one and indivisible.

(3) The division as a member of such rating organization shall determine the hazards of the different classes of occupations or industries and fix the premiums therefor at the lowest rate consistent with maintenance of an actuarially sound industrial insurance fund and the creation of actuarially sound surplus and reserves, and for such purpose may adopt a system of schedule rating in such a manner as to take account of the peculiar hazard of each risk and shall utilize the experience and information afforded to it as a member of such rating organization.

(4) In addition, compensation plan No. 3 shall use an experience rating system for employers enrolled under it. This system shall reward employers with a better than average safety record, penalize employers with a worse than average safety record, and may provide for premium volume discount.

(5) The division in fixing rates shall provide for the expenses of administering the industrial insurance expendable trust fund allowed by law, the disbursements on account of injuries and deaths of employees in each class, an actuarially sound catastrophe reserve, reserves actuarially determined to meet anticipated and unexpected losses, and such other reserves and surplus as may be determined by the division as a member of such rating organization. The amounts of such reserves and surplus shall be as determined from time to time by the division to be adequate but not excessive for the purposes intended.

History: (1)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2992, R.C.M. 1921; re-en. Sec. 2992, R.C.M. 1935; amd. Sec. 3, Ch. 123, L. 1957; amd. Sec. 21, Ch. 329, L. 1969; amd. Sec. 68, Ch.

23, L. 1975; Sec. 92-1104, R.C.M. 1947; (2) thru (5)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2993, R.C.M. 1921; re-en. Sec. 2993, R.C.M. 1935; amd. Sec. 4, Ch. 123, L. 1957; amd. Sec. 176, Ch. 147, L. 1963; amd. Sec. 22, Ch. 329, L. 1969; amd. Sec. 69, Ch. 23, L. 1975; amd. Sec. 1, Ch. 171, L. 1975; Sec. 92-1105, R.C.M. 1947; R.C.M. 1947, 92-1104, 92-1105(3), (4); amd. Sec. 4, Ch. 283, L. 1983.

Compiler's Comments

1983 Amendment: In (2) and (5), substituted "industrial insurance expendable trust fund" for "industrial insurance account".

Cross-References

"Division" defined, 39-71-116.

"Order" defined, 39-71-116.

39-71-2305. Advanced rate for dangerous places of employment. If, by reason of poor or careless management or otherwise, any place of employment is unduly dangerous in comparison with other like places of employment and the employer operating the same has not complied with the safety provisions of the Montana Safety Act and the employer is under compensation plan No. 3, the division, in addition to any other penalty provided, shall advance the rate upon such place of employment 50%. The advanced rate shall continue and be in force until the place of employment has ceased to be unduly dangerous in comparison with other like places of employment and the employer has obtained a certificate of the division.

History: En. 92-1105.1 by Sec. 28, Ch. 341, L. 1969; amd. Sec. 70, Ch. 23, L. 1975; R.C.M. 1947, 92-1105.1.

Cross-References

"Division" defined, 39-71-116.

"Employer" defined, 39-71-117.

39-71-2306. State fund authorized to charge interest. The state fund may charge interest on any balance that is due and owing the state fund by an employer who has misrepresented the employer's payroll, improperly classified the employer's payroll, or defaulted in premium payments. The interest rate charged shall be set by the state fund at a reasonable rate. In determining what is a reasonable rate, the state fund shall review appropriate interest rates charged by financial institutions in this state.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2996, R.C.M. 1921; re-en. Sec. 1996, R.C.M. 1935; amd. Sec. 4, Ch. 233, L. 1969; amd. Sec. 71, Ch. 23, L. 1975; R.C.M. 1947, 92-1108; amd. Sec. 15, Ch. 103, L. 1979.

Cross-References

Financial institutions — interest rates, sec. 2, Ch. 275, L. 1981; sec. 4, Ch. 276, L. 1981.

"Payroll" defined, 39-71-116.

"Employer" defined, 39-71-117.

39-71-2307. Cancellation of coverage under plan for default — thirty days' notice required. The division is hereby authorized in its discretion to cancel an employer's right to operate under plan No. 3 of the Workers' Compensation Act for failure to pay the premiums due. When the division makes an order canceling an employer's right for failure to pay premiums, the division shall notify the employer of its intent to cancel the employer at least 30 days before the cancellation becomes effective. After the cancellation date, the employer shall have the same status as an employer who is not enrolled under the Workers' Compensation Act.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3002, R.C.M. 1921; amd. Sec. 1, Ch. 201, L. 1935; re-en. Sec. 3002, R.C.M. 1935; amd. Sec. 10, Ch. 235, L. 1947; amd. Sec. 7, Ch. 123, L. 1957; amd. Sec. 181, Ch. 147, L. 1963; amd. Sec. 75, Ch. 23, L. 1975; amd. Sec. 1, Ch. 225, L. 1975; R.C.M. 1947, 92-1114(part).

Cross-References

"Division" defined, 39-71-116.

"Order" defined, 39-71-116.

"Employer" defined, 39-71-117.

39-71-2308. Collection in case of default. (1) If any employer under plan No. 3 shall default in any payment to the division, the sum due may be collected by an action at law in the name of the state, and such right of action shall be cumulative.

(2) When an employer's right to operate has been canceled by the division for failure to pay premiums and when the division in its discretion finds that the property and assets of the employer are not sufficient to pay the premiums, the division may compromise the claim for premiums and accept a payment of an amount less than the total amount due.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3002, R.C.M. 1921; amd. Sec. 1, Ch. 201, L. 1935; re-en. Sec. 3002, R.C.M. 1935; amd. Sec. 10, Ch. 235, L. 1947; amd. Sec. 7, Ch. 123, L. 1957; amd. Sec. 181, Ch. 147, L. 1963; amd. Sec. 75, Ch. 23, L. 1975; amd. Sec. 1, Ch. 225, L. 1975; R.C.M. 1947, 92-1114(part).

Cross-References

"Division" defined, 39-71-116.

"Employer" defined, 39-71-117.

39-71-2309. Repealed. Sec. 16, Ch. 103, L. 1979.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3003, R.C.M. 1921; re-en. Sec. 3003, R.C.M. 1935; amd. Sec. 182, Ch. 147, L. 1963; amd. Sec. 76, Ch. 23, L. 1975; R.C.M. 1947, 92-1115.

39-71-2310. Repealed. Sec. 16, Ch. 103, L. 1979.

History: (1)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3004, R.C.M. 1921; re-en. Sec. 3004, R.C.M. 1935; amd. Sec. 183, Ch. 147, L. 1963; Sec. 92-1116, R.C.M. 1947; (2)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3005, R.C.M. 1921; re-en. Sec. 3005, R.C.M. 1935; amd. Sec. 77, Ch. 23, L. 1975; Sec. 92-1117, R.C.M. 1947; R.C.M. 1947, 92-1116, 92-1117.

39-71-2311 through 39-71-2320 reserved.

39-71-2321. What to be deposited in industrial insurance expendable trust fund. All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the fund, and securities acquired by or through use of money shall be deposited in the industrial insurance expendable trust fund.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2993, R.C.M. 1921; re-en. Sec. 2993, R.C.M. 1935; amd. Sec. 4, Ch. 123, L. 1957; amd. Sec. 176, Ch. 147, L. 1963; amd. Sec. 22, Ch. 329, L. 1969; amd. Sec. 69, Ch. 23, L. 1975; amd. Sec. 1, Ch. 171, L. 1975; R.C.M. 1947, 92-1105(2); amd. Sec. 5, Ch. 283, L. 1983.

Compiler's Comments

1983 Amendment: At end of section, substituted "expendable trust fund" for "account in the agency fund".

39-71-2322. Money in industrial insurance fund held in trust — disposition of funds upon repeal of chapter. The moneys coming into the industrial insurance expendable trust fund shall be held in trust for the purpose for which such moneys were collected, and if this chapter shall be hereafter repealed, such moneys shall be subject to such disposition as may be provided by the legislature repealing this chapter. In default of such legislative provision, distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing.

History: En. Sec. 24, Ch. 96, L. 1915; re-en. Sec. 2966, R.C.M. 1921; re-en. Sec. 2966, R.C.M. 1935; amd. Sec. 168, Ch. 147, L. 1963; R.C.M. 1947, 92-840; amd. Sec. 6, Ch. 283, L. 1983.

Compiler's Comments

1983 Amendment: Near beginning of section, substituted "expendable trust fund" for "account in the agency fund".

39-71-2323. Surplus in industrial insurance expendable trust fund — payment of dividends. If at the end of any fiscal year there exists in the industrial insurance expendable trust fund an excess of assets over liabilities and a reasonable surplus, such liabilities to include necessary reserves, which excess may be divided safely, then the division may declare a dividend in such manner as the rules of the division may prescribe to those employers who have paid premiums into the industrial insurance expendable trust fund in excess of liabilities chargeable to them in the fund for that year. In determining the amount or proportion of the balance to which the employer is entitled as dividends, the division shall give consideration to the prior paid premiums and accident experience of each individual employer during the dividend year.

History: **En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2998, R.C.M. 1921; re-en. Sec. 2998, R.C.M. 1935; amd. Sec. 6, Ch. 123, L. 1957; amd. Sec. 180, Ch. 147, L. 1963; amd. Sec. 72, Ch. 23, L. 1975; R.C.M. 1947, 92-1110; amd. Sec. 7, Ch. 283, L. 1983.**

Compiler's Comments

1983 Amendment: Substituted three references to the industrial insurance expendable trust fund for references to the industrial insurance account in the agency fund.

Cross-References

"Division" defined, 39-71-116.

"Year" defined, 39-71-116.

"Employer" defined, 39-71-117.

39-71-2324. Investment of reserve — payment of installments. The division shall turn over the reserve to the board of investments to be invested, and the same shall be invested by the board of investments as part of the long-term investment fund and out of the same and its earnings shall be paid the monthly installments and any lump sum then or thereafter arranged for. However, when there is sufficient money in the industrial insurance expendable trust fund to meet such compensation payments, any surplus remaining may be invested as specified in this section.

History: **En. Sec. 40, Ch. 96, L. 1915; amd. Sec. 7, Ch. 196, L. 1921; re-en. Sec. 3000, R.C.M. 1921; re-en. Sec. 3000, R.C.M. 1935; amd. Sec. 17, Ch. 176, L. 1953; amd. Sec. 186, Ch. 147, L. 1963; amd. Sec. 73, Ch. 23, L. 1975; R.C.M. 1947, 92-1112; amd. Sec. 8, Ch. 283, L. 1983.**

Compiler's Comments

1983 Amendment: In last sentence, substituted "expendable trust fund" for "account in the agency fund".

Cross-References

"Division" defined, 39-71-116.

39-71-2325. Division to keep accounts of segregations. The division shall keep an accurate account of all such segregations of the industrial insurance expendable trust fund and shall divert from the fund any sums necessary to meet monthly payments, pending the conversion into cash of any security, and in such case shall repay the same out of the cash realized from the security.

History: **En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3001, R.C.M. 1921; re-en. Sec. 3001, R.C.M. 1935; amd. Sec. 187, Ch. 147, L. 1963; amd. Sec. 74, Ch. 23, L. 1975; R.C.M. 1947, 92-1113; amd. Sec. 9, Ch. 283, L. 1983.**

Compiler's Comments

1983 Amendment: Substituted two references to the industrial insurance expendable trust fund for references to the industrial insurance account in the agency fund.

Cross-References

"Division" defined, 39-71-116.

39-71-2326. Disbursements out of industrial insurance expendable trust fund — employer to pay warrant if funds insufficient. Disbursements out of the industrial insurance expendable trust fund shall be made by the division. If at any time there is not sufficient money in the fund with which to pay any warrants drawn thereon, the employer on account of whose workers the warrant was drawn shall pay the same, and upon his next contribution to the fund, he shall be credited with the amount so paid, with interest thereon at the rate of 6% per annum from the date of such payment to the date upon which the next assessment becomes payable; and if the amount of the credit exceeds the amount of such assessment, he shall have a warrant upon such fund for the excess; and if the warrant is not paid for want of funds, it shall be credited to the employer and be applied upon succeeding assessments.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3010, R.C.M. 1921; re-en. Sec. 3010, R.C.M. 1935; amd. Sec. 184, Ch. 147, L. 1963; amd. Sec. 81, Ch. 23, L. 1975; R.C.M. 1947, 92-1122; amd. Sec. 10, Ch. 283, L. 1983.

Compiler's Comments

1983 Amendment: Substituted four references to the industrial insurance expendable trust fund for references to the industrial insurance account in the agency fund.

Cross-References

"Division" defined, 39-71-116.

"Employer" defined, 39-71-117.

39-71-2327. Earnings of industrial insurance expendable trust fund to be credited to fund — improper use a felony. All earnings made by the industrial insurance expendable trust fund by reason of interest paid for the deposit thereof or otherwise shall be credited to and become a part of the fund, and the making of profit, either directly or indirectly, by any person out of the use of the fund shall constitute a felony and on conviction thereof shall subject the person making such profit to imprisonment in the state penitentiary for a term not exceeding 2 years or a fine not exceeding $5,000 or both such fine and imprisonment.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3011, R.C.M. 1921; re-en. Sec. 3011, R.C.M 1935; amd. Sec. 185, Ch. 147, L. 1963; amd. Sec. 82, Ch. 23, L. 1975; R.C.M. 1947, 92-1123; amd. Sec. 11, Ch. 283, L. 1983.

Compiler's Comments

1983 Amendment: Substituted three references to the industrial insurance expendable trust fund for references to the industrial insurance account in the agency fund.

Parts 24 through 28 reserved

Part 29

Workers' Compensation Judge

39-71-2901. Location of office. The principal office of the workers' ompensation judge shall be in the city of Helena.

History: En. 92-850 by Sec. 4, Ch. 537, L. 1975; R.C.M. 1947, 92-850.

39-71-2902. Operating expenses. The workers' compensation judge nay employ such employees as may be required to carry out the duties under nis part. All expenditures of the workers' compensation judge, including but ot limited to salaries, traveling expenses, office rent, office equipment, and upplies, shall be paid out of the workers' compensation administration fund.

History: En. 92-851 by Sec. 5, Ch. 537, L. 1975; R.C.M. 1947, 92-851.

39-71-2903. Administrative procedure act applicable — judge not bound by rules of evidence. All proceedings and hearings before the workers' compensation judge shall be in accordance with the appropriate provisions of the Montana Administrative Procedure Act. However, the workers' compensation judge is not bound by common law and statutory rules of evidence.

History: En. 92-852 by Sec. 6, Ch. 537, L. 1975; R.C.M. 1947, 92-852(1).

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

39-71-2904. Direct appeal to supreme court. Notwithstanding 2-4-701 through 2-4-704, an appeal from a final decision of the workers' compensation judge shall be filed directly with the supreme court of Montana in the manner provided by law for appeals from the district court in civil cases.

History: En. 92-852 by Sec. 6, Ch. 537, L. 1975; R.C.M. 1947, 92-852(2).

39-71-2905. Petition to workers' compensation judge. A claimant or an insurer who has a dispute concerning any benefits under chapter 71 of this title may petition the workers' compensation judge for a determination of the dispute. The judge, after a hearing, shall make a determination of the dispute in accordance with the law as set forth in chapter 71 of this title. If the dispute relates to benefits due a claimant under chapter 71, the judge shall fix and determine any benefits to be paid and specify the manner of payment. The workers' compensation judge has exclusive jurisdiction to make determinations concerning disputes under chapter 71, except as provided in 39-71-516. The penalties and assessments allowed against an insurer under chapter 71 are the exclusive penalties and assessments that can be assessed against an insurer for disputes arising under chapter 71.

History: En. 92-848 by Sec. 2, Ch. 537, L. 1975; R.C.M. 1947, 92-848(1); amd. Sec. 4, Ch. 63, L. 1979; amd. Sec. 11, Ch. 601, L. 1985.

Compiler's Comments

1985 Amendment: In fourth sentence, at end, inserted exception clause referring to 39-71-516.

Cross-References

"Insurer" defined, 39-71-116.

39-71-2906. Nominal disability awards. The judge may grant nominal disability awards in cases where it is found that an accident has occurred in the course and scope of employment but no disability has resulted therefrom.

History: En. 92-848 by Sec. 2, Ch. 537, L. 1975; R.C.M. 1947, 92-848(2).

39-71-2907. Increase in award for unreasonable delay or refusal to pay. When payment of compensation has been unreasonably delayed or refused by an insurer, either prior or subsequent to the issuance of an order by the workers' compensation judge granting a claimant compensation benefits, the full amount of the compensation benefits due a claimant, between the time compensation benefits were delayed or refused and the date of the order granting a claimant compensation benefits, may be increased by the workers' compensation judge by 20%. The question of unreasonable delay or refusal shall be determined by the workers' compensation judge, and such a finding constitutes good cause to rescind, alter, or amend any order, decision, or award previously made in the cause for the purpose of making the increase provided herein.

History: **En. 92-849 by Sec. 3, Ch. 537, L. 1975; R.C.M. 1947, 92-849; amd. Sec. 5, Ch. 63, L. 1979.**

Cross-References
"Insurer" defined, 39-71-116.
"Order" defined, 39-71-116.

39-71-2908. Review of orders allowing compromise settlements of claims. All orders allowing full and final compromise settlements of workers' compensation claims shall be immediately referred to the workers' compensation judge, and the judge may, within 10 days of the judge's receipt of an order, disapprove an order allowing a full and final compromise settlement.

History: **En. 92-848 by Sec. 2, Ch. 537, L. 1975; R.C.M. 1947, 92-848(3).**

Cross-References
"Order" defined, 39-71-116.

39-71-2909. Authority to review, diminish, or increase awards — limitation. The judge may, upon the petition of a claimant or an insurer that the disability of the claimant has changed, review, diminish, or increase, in accordance with the law on benefits as set forth in chapter 71 of this title, any benefits previously awarded by the judge or benefits received by a claimant through settlement agreements. However, the judge may not change any final settlement or award of compensation more than 4 years after the settlement has been approved by the division or any order approving a full and final compromise settlement of compensation.

History: **En. 92-848 by Sec. 2, Ch. 537, L. 1975; R.C.M. 1947, 92-848(4); amd. Sec. 6, Ch. 63, L. 1979.**

Cross-References
"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Order" defined, 39-71-116.

CHAPTER 72

OCCUPATIONAL DISEASE ACT OF MONTANA

Part 1 — General Provisions

Section

39-72-101. Short title.
39-72-102. Definitions.
39-72-103. No vested right to compensation.
39-72-104. Chapter to be liberally construed.

Part 2 — Administrative Provisions

39-72-201. Administration of chapter.
39-72-202. Powers of division.
39-72-203. Division to adopt rules.
39-72-204. Claim forms to be prescribed by division.
39-72-205. Repealed.
39-72-206. Legal action by division.

Part 3 — Coverage and Liability

39-72-301. Who subject to chapter.

39-72-302. Employer liability.
39-72-303. Which employer liable.
39-72-304. Physical examination of applicant for employment — no liability for occupational diseases found — procedure and requirements — rules.
39-72-305. Right to compensation exclusive remedy — uninsured employers.
39-72-306 through 39-72-309. Repealed.
39-72-310. Occupational disease coverage under workers' compensation plans.

Part 4 — Presentment and Payment of Claims Generally

39-72-401. Payment of compensation subject to provisions of chapter.
39-72-402. Practice and procedure — applicability of Workers' Compensation Act.
39-72-403. Time when claims must be presented.
39-72-404. False representation by employee concerning previous occupational disease.
39-72-405. General limitations on payment of compensation.
39-72-406. Repealed.
39-72-407. Repealed.
39-72-408. Proximate causation.

Part 5 — Standards for Determining Whether Death or Disability Due to Pneumoconiosis

39-72-501 through 39-72-508. Repealed.
39-72-509. Benefits for pneumoconiosis.

Part 6 — Medical Examinations—Determining Compensability of Claims

39-72-601. Medical panel.
39-72-602. Insurer may accept liability — procedure for medical examination when insurer has not accepted liability.
39-72-603. Repealed.
39-72-604. Repealed.
39-72-605. When occupational disease causes death.
39-72-606. Autopsy.
39-72-607. Periodic medical examinations.
39-72-608. Payment of medical examination and autopsy expenses.
39-72-609. Report of medical panel prima facie evidence.
39-72-610. Report of and examinations conducted by medical panel.
39-72-611. Hearing on determination — when.
39-72-612. Rehearing and appeal to workers' compensation judge.
39-72-613. Costs and attorney fees.

Part 7 — Compensation and Benefits

39-72-701. Compensation for total disability or death due to occupational disease other than pneumoconiosis.
39-72-702. Repealed.
39-72-703. No compensation for partial disability.
39-72-704. Medical and hospital expenses.
39-72-705. Burial expenses.
39-72-706. Aggravation.
39-72-707. Silicosis with complications.
39-72-708. Prohibiting supplementing of benefits.
39-72-709. Diminution of compensation.
39-72-710. Repealed.
39-72-711. Lump-sum and compromise settlements.
39-72-712. Methods of deducting attorney's fee from compensation.
39-72-713. Repealed.
39-72-714. Reduction or suspension of compensation for unsanitary or injurious practices or refusal to submit to medical or surgical treatment.

Part 1

General Provisions

39-72-101. Short title. This chapter may be cited as the "Occupational Disease Act of Montana".

History: En. Sec. 1, Ch. 155, L. 1959; R.C.M. 1947, 92-1301; amd. Sec. 84, Ch. 397, L. 1979.

39-72-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" is as defined in 39-71-116(2).

(2) "Child" is as defined in 39-71-116(4).

(3) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing work in the normal labor market. Silicosis, when complicated by active pulmonary tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are synonymous with "disablement", but they have no reference to "partial permanent disability".

(4) "Division" is as defined in 39-71-116(5).

(5) "Employee" is as defined in 39-71-118.

(6) "Employer" is as defined in 39-71-117.

(7) "Husband" is as defined in 39-71-116(7).

(8) "Independent contractor" is as defined in 39-71-120.

(9) "Insurer" is as defined in 39-71-116(8).

(10) "Invalid" is as defined in 39-71-116(9).

(11) "Occupational disease" means all diseases arising out of or contracted from and in the course of employment.

(12) "Order" is as defined in 39-71-116(10).

(13) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment.

(14) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO_2) and characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs causing the characteristic x-ray pattern and by other variable clinical manifestations.

(15) "Wages" is as defined in 39-71-116(20).

(16) "Wife" is as defined in 39-71-116(21).

(17) "Year" is as defined in 39-71-116(6) and 39-71-116(22).

History: (1) thru (10), (12) thru (17)En. 92-1303.1 by Sec. 1, Ch. 208, L. 1977; Sec. 92-1303.1, R.C.M. 1947; (11)En. Sec. 4, Ch. 155, L. 1959; amd. Sec. 1, Ch. 95, L. 1965; amd. Sec. 1, Ch. 41, L. 1971; Sec. 92-1304, R.C.M. 1947; R.C.M. 1947, 92-1303.1, 92-1304; amd. Sec. 1, Ch. 104, L. 1979; amd. Sec. 85, Ch. 397, L. 1979.

Cross-References

Eligibility for silicosis benefits — relationship to this chapter, 39-73-104.

39-72-103. No vested right to compensation. The right to the compensation provided for herein shall not nor shall the rate or amount thereof be or become vested or continuing rights in persons awarded compensation under this chapter or any amendment hereof, but the state reserves the right, by act of the legislature, to reduce the rate or amount of compensation thereafter to be received by any person theretofore or thereafter receiving compensation under this chapter or any amendment hereof or to wholly discontinue to all persons all compensation provided for by this chapter or any amendment hereof.

History: **En. Sec. 67, Ch. 155, L. 1959; R.C.M. 1947, 92-1367.**

39-72-104. Chapter to be liberally construed. Whenever this chapter or any part or section thereof is interpreted by a court, it shall be liberally construed by such court.

History: **En. Sec. 68, Ch. 155, L. 1959; R.C.M. 1947, 92-1368.**

Part 2

Administrative Provisions

39-72-201. Administration of chapter. This chapter shall be administered by the division of workers' compensation.

History: **En. Sec. 2, Ch. 155, L. 1959; amd. Sec. 188, Ch. 147, L. 1963; amd. Sec. 43, Ch. 182, L. 1975; R.C.M. 1947, 92-1302.**

Cross-References

"Division" defined, 39-71-116, 39-72-102.

39-72-202. Powers of division. The division is hereby vested with full power, authority, and jurisdiction to do and perform any and all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this chapter.

History: **En. Sec. 52, Ch. 155, L. 1959; amd. Sec. 24, Ch. 208, L. 1977; R.C.M. 1947, 92-1352.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

"Division" defined, 39-71-116, 39-72-102.

39-72-203. Division to adopt rules. Subject to the provisions of this chapter, the division shall adopt and publish rules governing procedure before it and shall prescribe forms of notice and manner of serving the same in all claims for compensation and may change the same from time to time at its discretion.

History: **En. Sec. 45, Ch. 155, L. 1959; R.C.M. 1947, 92-1345.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

"Division" defined, 39-71-116, 39-72-102.

39-72-204. Claim forms to be prescribed by division. Claims for compensation under this chapter shall be filed on forms prescribed and provided for by the division and shall be filed in the same manner as claims for compensation under the Workers' Compensation Act unless otherwise provided in this chapter.

History: **En. Sec. 46, Ch. 155, L. 1959; amd. Sec. 23, Ch. 208, L. 1977; R.C.M. 1947, 92-1346.**

Cross-References

"Division" defined, 39-71-116, 39-72-102.

39-72-205. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. Sec. 58, Ch. 155, L. 1959; amd. Sec. 173, Ch. 147, L. 1963; amd. Sec. 25, Ch. 208, L. 1977; R.C.M. 1947, 92-1358.

39-72-206. Legal action by division. Upon request of the division, the attorney general shall institute and prosecute actions for the enforcement of the provisions of this chapter or for any penalty provided for in this chapter. The attorney general shall prosecute or defend all actions brought by or against the division in its official capacity. The division may compromise any action brought under this chapter.

History: En. Sec. 43, Ch. 155, L. 1959; amd. Sec. 189, Ch. 147, L. 1963; amd. Sec. 22, Ch. 208, L. 1977; R.C.M. 1947, 92-1343.

Cross-References

Duties of Attorney General, 2-15-501.

"Division" defined, 39-71-116, 39-72-102.

Part 3

Coverage and Liability

39-72-301. Who subject to chapter. This chapter shall apply to and only to all employers and employees who now are or hereafter will be subject to the provisions of the Workers' Compensation Act of the state of Montana.

History: En. Sec. 7, Ch. 155, L. 1959; R.C.M. 1947, 92-1307(part).

39-72-302. Employer liability. There is imposed on every employer subject to this chapter a liability for the payment of compensation as herein provided.

History: En. Sec. 66, Ch. 155, L. 1959; R.C.M. 1947, 92-1366.

Cross-References

"Employer" defined, 39-71-117, 39-72-102.

39-72-303. Which employer liable. (1) Where compensation is payable for an occupational disease, the only employer liable shall be the employer in whose employment the employee was last injuriously exposed to the hazard of such disease.

(2) In the case of pneumoconiosis, any coal mine operator who has acquired a mine in the state or substantially all of the assets thereof from a person who was an operator of such mine on or after December 30, 1969, is liable for and must secure the payment of all benefits which would have been payable by that person with respect to miners previously employed in such mine if acquisition had not occurred and that person had continued to operate such mine, and the prior operator of such mine shall not be relieved of any liability under this section.

History: En. Sec. 10, Ch. 155, L. 1959; amd. Sec. 2, Ch. 190, L. 1971; R.C.M. 1947, 92-1310; amd. Sec. 1, Ch. 112, L. 1985.

Compiler's Comments

1985 Amendment: In (1) after "such disease", deleted "but in the case of silicosis, the only employer liable shall be the employer in whose employment the employee was last exposed to harmful quantities of silicon dioxide (SiO_2) dust for a period of 90 actual workshifts or more after July 1, 1958".

Applicability: Section 6, Ch. 112, L. 1985, provided: "This act applies to claims arising from exposures occurring on or after the effective date of this act." The act became effective October 1, 1985.

Cross-References
"Employer" defined, 39-71-117, 39-72-102.
"Employee" defined, 39-71-118, 39-72-102.
"Occupational disease" defined, 39-72-102.
"Pneumoconiosis" defined, 39-72-102.

39-72-304. Physical examination of applicant for employment — no liability for occupational diseases found — procedure and requirements — rules. (1) An employer may give, within 2 weeks of the beginning of employment, a physical examination to an applicant for employment. Where an applicant for employment, whether he has been formerly employed by the employer to whom application is made or not, though not actually disabled, is found upon competent medical and x-ray examination to be afflicted with an occupational disease, the employer is not liable under this chapter for disability from the particular disease or diseases with which the employee is found to be afflicted or for any normal progression without aggravation of the disease or diseases if a report of the medical examination is approved by the division as provided in this section.

(2) The report of the medical examination of the applicant for employment and x-rays, if any, shall be delivered to the division by the employer within 15 days after the examination. With the medical report and x-rays, if any, there shall be attached a certificate by the examining physician certifying that the medical report is the report of the physical examination of the applicant for employment.

(3) The division shall submit the medical report and x-rays, if any, to a physician of its choice, and the physician shall report to the division his finding as to whether the medical report is satisfactory. The division shall, within 20 days after the receipt of the medical report from the employer, enter its order approving or disapproving the report and specifying the particular disease or diseases found. The order shall be in writing stating the reasons for the approval or disapproval. A copy of the order shall be mailed to the employer and the applicant for employment within 24 hours after the division has approved or disapproved the report.

(4) An applicant for employment may commence work prior to the approval or disapproval of the report by the division. However, if the division disapproves the report, the employer may discharge the applicant for employment without liability to him.

(5) If no physical examination is given to the applicant for employment within the 2-week period, the applicant for employment is fully eligible for the benefits under this chapter.

(6) The division may adopt reasonable rules relative to the form, execution, and filing of reports submitted under this section not inconsistent with the provisions of this chapter.

History: En. Sec. 30, Ch. 155, L. 1959; amd. Sec. 16, Ch. 208, L. 1977; R.C.M. 1947, 92-1330(2) thru (7).

Cross-References
"Division" defined, 39-71-116, 39-72-102.
"Order" defined, 39-71-116, 39-72-102.
"Employer" defined, 39-71-117, 39-72-102.
"Employee" defined, 39-71-118, 39-72-102.
"Occupational disease" defined, 39-72-102.

39-72-305. Right to compensation exclusive remedy — uninsured employers. (1) The right to recover compensation pursuant to the provisions of this chapter for occupational diseases sustained by an employee and arising out of and in the course of employment, whether resulting in death or not, is the exclusive remedy therefor against an employer who is properly insured under the Workers' Compensation Act and the Occupational Disease Act of Montana.

(2) The provisions of the Workers' Compensation Act relating to uninsured employers and benefits due uninsured claimants apply to and are incorporated as part of this chapter.

History: En. Sec. 8, Ch. 155, L. 1959; R.C.M. 1947, 92-1308; amd. Sec. 2, Ch. 104, L. 1979.

Cross-References
"Employer" defined, 39-71-117, 39-72-102.
"Employee" defined, 39-71-118, 39-72-102.
"Occupational disease" defined, 39-72-102.

39-72-306 through 39-72-309. Repealed. Sec. 19, Ch. 104, L. 1979.

Compiler's Comments
Histories of Repealed Sections:

39-72-306. En. Sec. 30, Ch. 155, L. 1959; amd. Sec. 16, Ch. 208, L. 1977; R.C.M. 1947, 92-1330(1).

39-72-307. En. Sec. 41, Ch. 155, L. 1959; R.C.M. 1947, 92-1341.

39-72-308. En. Sec. 31, Ch. 155, L. 1959; R.C.M. 1947, 92-1331.

39-72-309. En. Sec. 39, Ch. 155, L. 1959; amd. Sec. 20, Ch. 208, L. 1977; R.C.M. 1947, 92-1339.

39-72-310. Occupational disease coverage under workers' compensation plans. (1) Every employer enrolled under compensation plan No. 1 (Title 39, chapter 71, part 21), every insurer writing workers' compensation coverage under compensation plan No. 2 (Title 39, chapter 71, part 22), and the state compensation insurance fund under compensation plan No. 3 (Title 39, chapter 71, part 23), all provided for under the Workers' Compensation Act, are considered to also provide full coverage for claims under this chapter. Any policy of insurance for workers' compensation coverage under the Workers' Compensation Act written by a private insurance carrier or the state compensation insurance fund is considered to provide full occupational disease coverage under the provisions of this chapter.

(2) Except as provided in this chapter, the division shall apply the appropriate provisions of Title 39, chapter 71, parts 21, 22, and 23, to the administration of The Occupational Disease Act of Montana in the same manner as they are applied to the administration of the Workers' Compensation Act.

(3) Under compensation plan No. 3, any premiums and other receipts held by the division for occupational disease insurance coverage shall be transferred and become part of the workers' compensation industrial insurance account, and payments for occupational disease claims by the state fund shall be paid out of the industrial insurance account.

History: En. 92-1334.1 by Sec. 17, Ch. 208, L. 1977; R.C.M. 1947, 92-1334.1.

Cross-References
"Division" defined, 39-71-116, 39-72-102.
"Insurer" defined, 39-71-116, 39-72-102.
"Employer" defined, 39-71-117, 39-72-102.
"Occupational disease" defined, 39-72-102.

Part 4

Presentment and Payment of Claims Generally

39-72-401. Payment of compensation subject to provisions of chapter. When he has complied with other provisions of this chapter, compensation shall be paid to a claimant who becomes disabled by reason of occupational disease arising out of his employment, subject to the conditions set forth in this chapter.

History: En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965; amd. Sec. 2, Ch. 208, L. 1977; R.C.M. 1947, 92-1311(part).

Cross-References

"Occupational disease" defined, 39-72-102.

39-72-402. Practice and procedure — applicability of Workers' Compensation Act. (1) Except as otherwise provided in this chapter, the practice and procedure prescribed in the Workers' Compensation Act applies to all proceedings under this chapter.

(2) Sections 39-71-304, 39-71-403, 39-71-406, 39-71-409, 39-71-411 through 39-71-413, and 39-71-742 in the Workers' Compensation Act specifically apply to and are incorporated as part of this chapter.

History: En. Sec. 7, Ch. 155, L. 1959; R.C.M. 1947, 92-1307(part); amd. Sec. 3, Ch. 104, L. 1979.

39-72-403. Time when claims must be presented. (1) When a claimant seeks benefits under this chapter, his claims for benefits must be presented in writing to the employer, the employer's insurer, or the division within 2 years from the date the claimant knew or should have known that his total disability condition resulted from an occupational disease. When a beneficiary seeks benefits under this chapter, his claims for death benefits must be presented in writing to the employer, the employer's insurer, or the division within 1 year from the date the beneficiaries knew or should have known that the decedent's death was related to an occupational disease.

(2) The division may, upon a reasonable showing by the claimant or a decedent's beneficiaries that the claimant or the beneficiaries could not have known that the claimant's condition or the employee's death was related to an occupational disease, waive the claim time requirement up to an additional 2 years.

History: En. 92-1312.1 by Sec. 3, Ch. 208, L. 1977; R.C.M. 1947, 92-1312.1; amd. Sec. 2, Ch. 112, L. 1985.

Compiler's Comments

1985 Amendment: In first sentence of (1) changed "1 year" to "2 years"; and deleted former (3) that read: "Notwithstanding the provisions of subsections (1) and (2) of this section, no claim to recover benefits under this chapter may be maintained unless the claim is properly filed within 3 years after the last day upon which the claimant or the deceased employee actually worked for the employer against whom compensation is claimed."

Applicability: Section 6, Ch. 112, L. 1985, provided: "This act applies to claims arising from exposures occurring on or after the effective date of this act." The act became effective October 1, 1985.

Cross-References

"Beneficiary" defined, 39-71-116, 39-72-102.
"Division" defined, 39-71-116, 39-72-102.
"Insurer" defined, 39-71-116, 39-72-102.
"Year" defined, 39-71-116, 39-72-102.
"Employer" defined, 39-71-117, 39-72-102.
"Employee" defined, 39-71-118, 39-72-102.
"Occupational disease" defined, 39-72-102.

39-72-404. False representation by employee concerning previous occupational disease. No compensation shall be payable for an occupational disease if the employee, at the time of entering the employment of the employer by whom the compensation would otherwise be payable, knowingly represented himself in writing as not having previously been disabled, laid off, or compensated in damages or otherwise because of such disease when the contrary is true.

History: En. Sec. 42, Ch. 155, L. 1959; R.C.M. 1947, 92-1342.

Cross-References
"Employer" defined, 39-71-117, 39-72-102.
"Employee" defined, 39-71-118, 39-72-102.
"Occupational disease" defined, 39-72-102.

39-72-405. General limitations on payment of compensation. (1) Compensation may not be paid when the last day of the injurious exposure of the employee to the hazard of the occupational disease has occurred prior to July 1, 1959.

(2) When any employee in employment on or after January 1, 1959, because he has an occupational disease incurred in and caused by such employment which is not yet disabling, is discharged or transferred from the employment in which he is engaged or when he ceases his employment and it is in fact, as determined by the medical panel, inadvisable for him on account of a nondisabling occupational disease to continue in employment and he suffers wage loss by reason of the discharge, transfer, or cessation, the division may allow compensation on account thereof as it considers just, not exceeding $10,000.

History: En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965; amd. Sec. 2, Ch. 208, L. 1977; R.C.M. 1947, 92-1311(1)(a) thru (d); amd. Sec. 4, Ch. 104, L. 1979; amd. Sec. 3, Ch. 112, L. 1985.

Compiler's Comments

1985 Amendment: At beginning of (1) deleted "Except as provided for in this section"; and deleted all of former (2) and part of former (3) that read: "(2) Except as provided for in subsection (3) of this section, no compensation may be paid for silicosis unless during the 8 years immediately preceding the disablement the injured employee has been exposed to harmful quantities of silicon dioxide dust for a total period of not less than 1,000 workshifts in employment in this state and unless total disability results within 3 years from the last day upon which the employee actually worked for the employer against whom compensation is claimed.

(3) A silicotic employee who is discharged by his employer to escape liability for silicosis benefits under this chapter is eligible to receive compensation under this chapter when totally disabled if he has 700 actual workshifts since January 1, 1954, for that employer."

Applicability: Section 6, Ch. 112, L. 1985, provided: "This act applies to claims arising from exposures occurring on or after the effective date of this act." The act became effective October 1, 1985.

Cross-References
"Division" defined, 39-71-116, 39-72-102.
"Employer" defined, 39-71-117, 39-72-102.
"Employee" defined, 39-71-118, 39-72-102.
"Disablement" defined, 39-72-102.
"Occupational disease" defined, 39-72-102.
"Silicosis" defined, 39-72-102.

39-72-406. Repealed. Sec. 5, Ch. 112, L. 1985.

History: En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965; amd. Sec. 2, Ch. 208, L. 1977; R.C.M. 1947, 92-1311(2); amd. Sec. 5, Ch. 104, L. 1979.

39-72-407. Repealed. Sec. 5, Ch. 112, L. 1985.

History: En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965; amd. Sec. 2, Ch. 208, L. 1977; R.C.M. 1947, 92-1311(3).

39-72-408. Proximate causation. Occupational diseases shall be deemed to arise out of the employment only if:

(1) there is a direct causal connection between the conditions under which the work is performed and the occupational disease;

(2) the disease can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;

(3) the disease can be fairly traced to the employment as the proximate cause;

(4) the disease does not come from a hazard to which workmen would have been equally exposed outside of the employment;

(5) the disease is incidental to the character of the business and not independent of the relation of employer and employee.

History: En. Sec. 5, Ch. 155, L. 1959; amd. Sec. 1, Ch. 40, L. 1971; R.C.M. 1947, 92-1305.

Cross-References
"Employer" defined, 39-71-117, 39-72-102.
"Employee" defined, 39-71-118, 39-72-102.
"Occupational disease" defined, 39-72-102.

Part 5

Standards for Determining Whether Death or Disability Due to Pneumoconiosis

39-72-501 through 39-72-508. Repealed. Sec. 19, Ch. 104, L. 1979.

Compiler's Comments
Histories of Repealed Sections:
39-72-501. En. 92-1315.2 by Sec. 7, Ch. 208, L. 1977; R.C.M. 1947, 92-1315.2.
39-72-502. En. Sec. 5, Ch. 190, L. 1971; R.C.M. 1947, 92-1315.1.
39-72-503 through 39-72-508. En. Sec. 15, Ch. 155, L. 1959; amd. Sec. 4, Ch. 190, L. 1971; amd. Sec. 6, Ch. 208, L. 1977; R.C.M. 1947, 92-1315(1) through (6).

39-72-509. Benefits for pneumoconiosis. Pneumoconiosis is an occupational disease that is compensable under this chapter. However, any benefits granted a claimant under this chapter for pneumoconiosis must be reduced, but not below zero, by an amount equal to the benefits granted the claimant under any program under federal law that pays benefits for a claimant suffering disability from pneumoconiosis.

History: En. Sec. 6, Ch. 104, L. 1979.

Cross-References
"Occupational disease" defined, 39-72-102.
"Pneumoconiosis" defined, 39-72-102.

Part 6

Medical Examinations — Determining Compensability of Claims

39-72-601. Medical panel. (1) The Montana medical association may, at least annually, certify to the division as nominees 10 or more licensed physicians of the state to serve on the medical panel. At least three of the physicians must have had at the time of certification at least 5 years' practice in the diagnosis, care, and treatment of pulmonary diseases and the interpretation of x-ray films. At least three of the physicians must have had at the time of certification qualifications in the diagnosis, care, and treatment of nonpulmonary occupational diseases.

(2) From the list submitted as provided for in this section, the division shall appoint five or more physicians to serve on the medical panel.

(3) If the Montana medical association fails to submit the list of nominees as provided for in this section, the division shall appoint as members of the medical panel five or more licensed physicians in the state. Three of the panel members must have had at the time of appointment at least 5 years' practice

in the diagnosis, care, and treatment of pulmonary diseases and the interpretation of x-ray films.

(4) The panel members shall appoint one member of the panel to be the chairman.

History: En. Sec. 14, Ch. 155, L. 1959; amd. Sec. 4, Ch. 208, L. 1977; R.C.M. 1947, 92-1314; amd. Sec. 7, Ch. 104, L. 1979.

Cross-References

"Division" defined, 39-71-116, 39-72-102.

39-72-602. Insurer may accept liability — procedure for medical examination when insurer has not accepted liability. (1) An insurer may accept liability for a claim under this chapter based on information submitted to it by a claimant.

(2) In order to determine the compensability of claims under this chapter when an insurer has not accepted liability, the following procedure must be followed:

(a) The division shall direct the claimant to a member of the medical panel for an examination. The panel member shall conduct an examination to determine whether the claimant is totally disabled and is suffering from an occupational disease. The panel member shall submit a report of his findings to the division.

(b) Either the claimant or the insurer may, within 20 days after the receipt of the report by the first panel member, request that the claimant be examined by a second panel member. If a second examination is requested, the division shall direct the claimant to a second panel member who shall conduct an examination to determine whether he believes the claimant is totally disabled and is suffering from an occupational disease. The panel member shall submit a report of his findings to the division. When a second examination has been requested, the reports of the examinations shall be submitted to three members of the medical panel for review. A medical panel member or the panel may, in order to assist the panel member or the panel in reaching a conclusion, consult with the claimant's attending physician. The three panel members shall issue a report concerning the claimant's physical condition and whether the claimant is suffering from an occupational disease.

(c) If a second examination is not requested, the division shall issue its order determining whether the claimant is entitled to occupational disease benefits based on the report of the first examining physician. If a second examination is requested, the division shall issue its order based on the report of the three members of the medical panel.

(d) For the purpose of reviewing the reports of the examinations and issuing the report under subsection (2)(b), the three members of the medical panel shall be the two members of the panel who examined the claimant and the panel chairman. If the panel chairman has examined the claimant, the panel chairman shall appoint another member of the medical panel to be the third member.

History: En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(1); amd. Sec. 8, Ch. 104, L. 1979.

Cross-References

"Division" defined, 39-71-116, 39-72-102.
"Insurer" defined, 39-71-116, 39-72-102.
"Order" defined, 39-71-116, 39-72-102.
"Occupational disease" defined, 39-72-102.

39-72-603. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(2).

39-72-604. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. Sec. 16, Ch. 155, L. 1959; amd. Sec. 8, Ch. 208, L. 1977; R.C.M. 1947, 92-1316.

39-72-605. When occupational disease causes death. When an occupational disease is claimed to have caused death and a claim for death benefits is filed therefor, the division shall select at least two physicians who in the division's judgment could properly determine the condition regarding the decedent's death in relation to a possible occupational disease, and the physicians shall examine all available evidence pertaining to the claim and shall make findings and report to the division. The report is prima facie evidence of fact as to the matters therein contained.

History: En. Sec. 17, Ch. 155, L. 1959; amd. Sec. 9, Ch. 208, L. 1977; R.C.M. 1947, 92-1317; amd. Sec. 9, Ch. 104, L. 1979.

Cross-References

"Division" defined, 39-71-116, 39-72-102.

"Occupational disease" defined, 39-72-102.

39-72-606. Autopsy. Upon the filing of a claim for compensation for death caused by an occupational disease if an autopsy is necessary to determine the cause of death, an autopsy shall be ordered by the division. The autopsy shall be made under the supervision of the county coroner or a medical examiner. The division may designate a duly licensed physician who is a specialist in such examinations to perform or attend the autopsies and to certify his findings thereon. The findings shall be examined by the physicians submitting a report under 39-72-605 before the final report under that section is submitted to the division.

History: En. Sec. 18, Ch. 155, L. 1959; amd. Sec. 10, Ch. 208, L. 1977; R.C.M. 1947, 92-1318; amd. Sec. 27, Ch. 7, L. 1979; amd. Sec. 10, Ch. 104, L. 1979.

Cross-References

"Division" defined, 39-71-116, 39-72-102.

"Occupational disease" defined, 39-72-102.

39-72-607. Periodic medical examinations. (1) Upon the request of the division or the insurer, each employee entitled to compensation shall submit to a medical examination from time to time by a physician designated by the division who is a member of the appropriate medical panel. The examination shall be at a place reasonably convenient for the employee.

(2) The order directing the examination shall fix a time and place having regard to the convenience of the employee, his physical condition, and his ability to attend. The employee and any other party in interest may have a physician present at the examination if the physician is provided and paid for by the employee or other party.

(3) If the employee refuses to submit to the examination or obstructs the examination, his right to compensation is suspended until the examination has been made, and no compensation is payable during or for the period of suspension.

(4) A physician who makes or is present at the examination may be required to testify as to the result thereof.

History: En. Sec. 19, Ch. 155, L. 1959; amd. Sec. 11, Ch. 208, L. 1977; R.C.M. 1947, 92-1319(1) thru (4).

Cross-References
"Division" defined, 39-71-116, 39-72-102.
"Insurer" defined, 39-71-116, 39-72-102.
"Order" defined, 39-71-116, 39-72-102.
"Employee" defined, 39-71-118, 39-72-102.

39-72-608. Payment of medical examination and autopsy expenses. The expense of the first medical examination as provided in 39-72-602 shall be borne by the insurer. The expense of a reexamination shall be borne by the dissatisfied party requesting the reexamination. The expense of the periodic medical examinations, as provided in 39-72-607, shall be borne by the party requesting the periodic medical examination. The expense of the autopsy, as provided for in 39-72-606, shall be borne by the party requesting the autopsy.

History: En. Sec. 20, Ch. 155, L. 1959; amd. Sec. 12, Ch. 208, L. 1977; R.C.M. 1947, 92-1320; amd. Sec. 11, Ch. 104, L. 1979.

Cross-References
"Insurer" defined, 39-71-116, 39-72-102.

39-72-609. Report of medical panel prima facie evidence. A report submitted to the division by the appropriate medical panel and placed in the division's records is prima facie evidence as to the matters contained in the report.

History: En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(3).

Cross-References
"Division" defined, 39-71-116, 39-72-102.

39-72-610. Report of and examinations conducted by medical panel. (1) At a hearing held before the division or the workers' compensation judge, there is a rebuttable presumption that the report of the medical panel and any medical examination reports by members of the medical panel are correct.

(2) The claimant or the insurer may present additional medical information in order to rebut the medical examination report of a panel member or a panel report.

History: En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(5); amd. Sec. 12, Ch. 104, L. 1979.

Cross-References
"Division" defined, 39-71-116, 39-72-102.
"Insurer" defined, 39-71-116, 39-72-102.

39-72-611. Hearing on determination — when. Upon the division's own motion or if a claimant or an insurer requests that a hearing be held by the division prior to the time the division issues its final determination concerning the claimant's entitlement to occupational disease benefits, the division shall hold a hearing.

History: En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(4).

Cross-References
"Division" defined, 39-71-116, 39-72-102.
"Insurer" defined, 39-71-116, 39-72-102.
"Occupational disease" defined, 39-72-102.

39-72-612. Rehearing and appeal to workers' compensation judge. (1) Within 20 days after the division has issued its order of determination as to whether the claimant is entitled to benefits under this chapter, a party may request a rehearing. In order to perfect an appeal to the workers' compensation judge, the appealing party must request a rehearing before the division.

The division may grant a rehearing and, if a rehearing is granted, the division's final determination may not be issued until after the rehearing. If the division does not grant a rehearing, the division's final determination is issued on the date the rehearing is denied.

(2) Appeals from a final determination of the division shall be made to the workers' compensation judge within 30 days after the division has issued its final determination. The judge, after a hearing held pursuant to 39-71-2903 and 39-71-2904, shall make a final determination concerning the claimant's claim. The judge may overrule the division only on the basis that the division's determination is:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

History: (1)En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; Sec. 92-1314.1, R.C.M. 1947; (2)En. Sec. 35, Ch. 155, L. 1959; amd. Sec. 172, Ch. 147, L. 1963; amd. Sec. 18, Ch. 208, L. 1977; Sec. 92-1335, R.C.M. 1947; R.C.M. 1947, 92-1314.1(6), 92-1335; amd. Sec. 13, Ch. 104, L. 1979.

Cross-References

"Division" defined, 39-71-116, 39-72-102.

"Order" defined, 39-71-116, 39-72-102.

39-72-613. Costs and attorney fees. (1) If an insurer requests that a hearing be held before the division and the claim is determined compensable by the division after the hearing and the insurer does not appeal the division's decision to the workers' compensation judge, reasonable costs and attorney fees, as determined by the division, shall be paid to the claimant's attorney by the insurer.

(2) If an insurer appeals a decision of the division to the workers' compensation judge or from the judge to the supreme court and the claim is determined compensable, reasonable costs and attorney fees, as determined by the workers' compensation judge, shall be paid to the claimant's attorney by the insurer for proceedings before the division, the workers' compensation judge, and the supreme court.

History: En. Sec. 14, Ch. 104, L. 1979.

Cross-References

"Division" defined, 39-71-116, 39-72-102.

"Insurer" defined, 39-71-116, 39-72-102.

Part 7

Compensation and Benefits

Part Cross-References

Occupational disease benefits exempt from medical services lien, 71-3-1118.

39-72-701. Compensation for total disability or death due to occupational disease other than pneumoconiosis. (1) The compensation to which an employee temporarily totally disabled or permanently totally disabled by an occupational disease other than pneumoconiosis, or the beneficiaries and dependents of the employee in the case of death caused by an occupational disease other than pneumoconiosis, are entitled under this chapter shall be the same payments which are payable to an injured employee, and such payments shall be made for the same period of time as is provided in cases of temporary total disability, permanent total disability, and in cases of injuries causing death under the Workers' Compensation Act.

(2) In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the disease, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal as nearly as practical to one-half the federal periodic benefits for such week, which amount is to be calculated from the date of the disability social security entitlement.

History: En. Sec. 21, Ch. 155, L. 1959; amd. Sec. 6, Ch. 190, L. 1971; amd. Sec. 47, Ch. 535, L. 1975; R.C.M. 1947, 92-1321(part); amd. Sec. 88, Ch. 397, L. 1979; amd. Sec. 8, Ch. 21, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (2).

Cross-References

"Employee" defined, 39-71-118, 39-72-102.
"Occupational disease" defined, 39-72-102.
"Pneumoconiosis" defined, 39-72-102.

39-72-702. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. Sec. 21, Ch. 155, L. 1959; amd. Sec. 6, Ch. 190, L. 1971; amd. Sec. 47, Ch. 535, L. 1975; R.C.M. 1947, 92-1321(part); amd. Sec. 89, Ch. 397, L. 1979.

39-72-703. No compensation for partial disability. No compensation as provided in 39-72-701 is payable to an employee who is partially disabled from an occupational disease.

History: En. Sec. 22, Ch. 155, L. 1959; R.C.M. 1947, 92-1322; amd. Sec. 15, Ch. 104, L. 1979.

Cross-References

"Employee" defined, 39-71-118, 39-72-102.
"Occupational disease" defined, 39-72-102.

39-72-704. Medical and hospital expenses. In addition to the compensation provided by this chapter, an employee who becomes either totally or partially disabled from an occupational disease is entitled to receive for treatment of the occupational disease, without limitation as to length of time or dollar amount, reasonable medical services, hospitalization, medicines, and other treatment approved by the division.

History: En. Sec. 25, Ch. 155, L. 1959; amd. Sec. 15, Ch. 208, L. 1977; R.C.M. 1947, 92-1325; amd. Sec. 16, Ch. 104, L. 1979.

Cross-References

"Division" defined, 39-71-116, 39-72-102.
"Employee" defined, 39-71-118, 39-72-102.
"Occupational disease" defined, 39-72-102.

39-72-705. Burial expenses. In addition to and separate and apart from any other compensation or benefit provided for in this chapter, there shall be paid in case of death of an employee, which death is the result of an occupational disease contracted in the course of employment, the reasonable burial expenses of the employee, not exceeding the maximum amount provided for in 39-71-725.

History: En. Sec. 24, Ch. 155, L. 1959; amd. Sec. 14, Ch. 208, L. 1977; R.C.M. 1947, 92-1324.

Cross-References
"Employee" defined, 39-71-118, 39-72-102.
"Occupational disease" defined, 39-72-102.

39-72-706. Aggravation. (1) Where an occupational disease is aggravated by any other disease or infirmity not itself compensable or where disability or death from any other cause not itself compensable is aggravated, prolonged, accelerated, or in any wise contributed to by an occupational disease, the compensation payable under this chapter shall be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as such occupational disease as a causative factor bears to all the causes of such disability or death.

(2) Where compensation is reduced a proportionate amount as in subsection (1) above and the worker receives disability social security benefits, the offset entitlement granted to the insurer shall be reduced in the same proportionate amount as the compensation as long as the worker continues to receive disability social security benefits.

History: En. Sec. 26, Ch. 155, L. 1959; R.C.M. 1947, 92-1326; amd. Sec. 9, Ch. 21, L. 1981.

Compiler's Comments
1981 Amendment: Added subsection (2).

Cross-References
"Insurer" defined, 39-71-116, 39-72-102.

39-72-707. Silicosis with complications. In cases of disability or death from silicosis complicated with tuberculosis of the lungs, compensation shall be payable as for disability or death from an uncomplicated silicosis. In case of disability or death from silicosis when complicated with any disease not compensable under this chapter and other than pulmonary tuberculosis, compensation shall be reduced as provided in 39-72-706.

History: En. Sec. 27, Ch. 155, L. 1959; R.C.M. 1947, 92-1327.

Cross-References
"Silicosis" defined, 39-72-102.

39-72-708. Prohibiting supplementing of benefits. No person receiving compensation or benefits under chapter 73 of this title is entitled to compensation or benefits under this chapter.

History: En. Sec. 32, Ch. 155, L. 1959; R.C.M. 1947, 92-1332(part); amd. Sec. 90, Ch. 397, L. 1979.

39-72-709. Diminution of compensation. Compensation payable pursuant to the terms of this chapter to the claimant, his beneficiaries, or dependents shall be diminished by the amount of any compensation paid or to be paid him or them under the Workers' Compensation Act of Montana or any other workers' compensation act.

History: En. Sec. 33, Ch. 155, L. 1959; R.C.M. 1947, 92-1333.

39-72-710. Repealed. Sec. 19, Ch.104, L. 1979.

History: En. Sec. 37, Ch. 155, L. 1959; amd. Sec. 19, Ch. 208, L. 1977; R.C.M. 1947, 92-1337.

39-72-711. Lump-sum and compromise settlements. (1) No final and binding award made upon any claim pursuant to this chapter may be converted into a lump-sum payment, in whole or in part, except as provided in this section or 39-72-712.

(2) Whenever there are contested issues as to an insurer's liability for a claim under this chapter, including a claim based on 39-72-405(2), a claimant and an insurer may enter into a full and final compromise settlement of the claim. However, no such settlements are binding on the parties until approved by the division. After the division approves a full and final compromise settlement, the claim is closed and the insurer's liability for a settled claim is forever released.

History: En. Sec. 23, Ch. 155, L. 1959; amd. Sec. 13, Ch. 208, L. 1977; R.C.M. 1947, 92-1323(part); amd. Sec. 17, Ch. 104, L. 1979; amd. Sec. 4, Ch. 112, L. 1985.

Compiler's Comments

1985 Amendment: Near beginning of (2) after "based on", changed "39-72-405(3)" to "39-72-405(2)".

Cross-References

"Division" defined, 39-71-116, 39-72-102.

"Insurer" defined, 39-71-116, 39-72-102.

39-72-712. Methods of deducting attorney's fee from compensation. If a claimant has entered into a contract of employment with an attorney for the recovery of benefits under this chapter and the terms of the employment contract are reasonable, the amount of the attorney's fee may be ordered by the division to be paid by the insurer and thereafter deducted proportionately from weekly payments thereafter to be made to the claimant under this chapter. The division may require payments to be deducted each week in an amount it considers advisable from the payments thereafter to be made to the claimant under this chapter and paid to the attorney as they are so deducted from the weekly payments to the claimant.

History: En. Sec. 23, Ch. 155, L. 1959; amd. Sec. 13, Ch. 208, L. 1977; R.C.M. 1947, 92-1323(part).

Cross-References

"Division" defined, 39-71-116, 39-72-102.

"Insurer" defined, 39-71-116, 39-72-102.

39-72-713. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. Sec. 29, Ch. 155, L. 1959; R.C.M. 1947, 92-1329.

39-72-714. Reduction or suspension of compensation for unsanitary or injurious practices or refusal to submit to medical or surgical treatment. The division may reduce or suspend the compensation of an employee who persists in unsanitary or injurious practices tending to imperil or retard his recovery or who refuses to submit to such medical or surgical treatment as is reasonably essential to promote his recovery.

History: En. Sec. 19, Ch. 155, L. 1959; amd. Sec. 11, Ch. 208, L. 1977; R.C.M. 1947, 92-1319(5).

Cross-References

"Division" defined, 39-71-116, 39-72-102.

"Employee" defined, 39-71-118, 39-72-102.

CHAPTER 73

SILICOSIS BENEFITS

Part 1 — General Provisions

Section

39-73-101. Definitions.
39-73-102. Administration — duties of division.

39-73-103. Conformity with acts of federal government.
39-73-104. Eligibility requirements for benefits.
39-73-105. Application for payment.
39-73-106. Investigation of applications.
39-73-107. Amount of payments.
39-73-108. Payment of benefits where person entitled is in institution.
39-73-109. Payment of benefits to surviving spouse.
39-73-110. Assistance not assignable or subject to legal process.

Part 1

General Provisions

39-73-101. Definitions. (1) "Payments" means money payments to persons having silicosis as herein defined.

(2) "Silicosis" means a fibrotic condition of the lungs due to the inhalation of silica dust.

(3) "Examining board" shall mean well-qualified physician or physicians, as designated by the division of workers' compensation.

(4) The term "gainful occupation", as used herein, shall not be construed to mean occasional or intermittent light employment where the ability to do manual labor is not essential but shall mean any person having an income from any other source exceeding $150 per month.

History: (1) thru (3)En. Sec. 1, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 225, L. 1961; amd. Sec. 1, Ch. 360, L. 1971; amd. Sec. 38, Ch. 182, L. 1975; Sec. 71-1001, R.C.M. 1947; (4)En. Sec. 3, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973; Sec. 71-1003, R.C.M. 1947; R.C.M. 1947, 71-1001, 71-1003(part).

Cross-References

"Silicosis" defined for Occupational Disease Act, 39-72-102.

39-73-102. Administration — duties of division. The division of workers' compensation shall administer this chapter. The division shall:

(1) formulate a plan and adopt rules for the operation of this chapter;

(2) cooperate with the federal government in all matters of immediate concern pertaining to silicosis;

(3) publish an annual report and interim reports as may be necessary or required or asked for by the governor;

(4) designate the procedure to be followed in securing a competent medical examination for the purposes of determining silicosis in each individual applicant;

(5) designate suitable physicians or physician, well qualified to examine applicants for aid under this chapter;

(6) pay the actual transportation expenses of any applicant from the place of his residence in the state to the place of examination and return, from funds appropriated to the division for that purpose;

(7) develop and cooperate with other agencies in developing measures for the prevention of silicosis.

History: En. Sec. 2, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 2, Ch. 225, L. 1961; amd. Sec. 39, Ch. 182, L. 1975; R.C.M. 1947, 71-1002.

Cross-References

"Silicosis" defined, 39-73-101.

39-73-103. Conformity with acts of federal government. If and when the government of the United States makes grants to states in aid of and allowing payments to persons having silicosis, as herein defined, the division of workers' compensation is hereby authorized to administer in the state of Montana such grants-in-aid and payments in addition to grants made by this chapter. The total payments to any individual under this chapter shall not exceed $200 per month, exclusive of any grants made by congress.

History: En. Sec. 8, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 3, Ch. 216, L. 1947; amd. Sec. 3, Ch. 192, L. 1949; amd. Sec. 2, Ch. 204, L. 1953; amd. Sec. 3, Ch. 252, L. 1955; amd. Sec. 2, Ch. 3, L. 1961; amd. Sec. 8, Ch. 225, L. 1961; amd. Sec. 3, Ch. 267, L. 1965; amd. Sec. 3, Ch. 125, L. 1967; amd. Sec. 3, Ch. 260, L. 1969; amd. Sec. 3, Ch. 105, L. 1971; amd. Sec. 3, Ch. 504, L. 1973; R.C.M. 1947, 71-1008; amd. Sec. 1, Ch. 559, L. 1981.

Compiler's Comments

1981 Amendment: Changed payments from "$175" to "$200".

Cross-References

"Silicosis" defined, 39-73-101.

39-73-104. Eligibility requirements for benefits. Payment shall be made under this chapter to any person who:

(1) has silicosis, as defined in 39-73-101, which results in his total disability so as to render it impossible for him to follow continuously any substantially gainful occupation;

(2) has resided in and been an inhabitant of the state of Montana for 10 years or more immediately preceding the date of the application;

(3) is not receiving, with respect to any month for which he would receive a payment under this chapter, compensation under The Occupational Disease Act of Montana, as provided by chapter 72 of this title, which will equal the sum of $200.

History: En. Sec. 3, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973; R.C.M. 1947, 71-1003(part); amd. Sec. 2, Ch. 559, L. 1981.

Compiler's Comments

1981 Amendment: Changed payments from "$175" to "$200".

Cross-References

"Gainful occupation" defined, 39-73-101.

39-73-105. Application for payment. Application for payment under this chapter shall be made by the person seeking such payment to the division. The application shall be in writing or reduced to writing in the manner and upon the form prescribed by the division. The application form may be filled in and written by a person authorized by the division. If the applicant is unable to sign his or her name on the application, a duly witnessed mark may be used.

History: En. Sec. 5, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 5, Ch. 225, L. 1961; amd. Sec. 40, Ch. 182, L. 1975; R.C.M. 1947, 71-1005.

39-73-106. Investigation of applications. (1) Whenever the division under this chapter receives an application for a payment, an investigation and record shall be promptly made of the validity of the claim. The object of such investigation shall be to ascertain whether or not the applicant is entitled to a payment under the provisions of this chapter and such other information as may be required by the rules of the division. The investigation of such applicant shall be conducted by representatives of the division. The physicians or physician designated by the division, as herein provided, shall constitute an examining board for such clinical, pathological, x-ray, and roentgen examinations as in the opinion of the examining board may be necessary to determine whether or not the applicant has silicosis, as herein defined. A certified report of such examination from the examining board of physicians or physician must be attached to the investigation report.

(2) Upon the completion of such investigation, the division shall determine whether or not the applicant is entitled to a payment under this chapter. The division shall then notify the applicant of its decision.

History: (1)En. Sec. 6, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 6, Ch. 225, L. 1961; amd. Sec. 41, Ch. 182, L. 1975; Sec. 71-1006, R.C.M. 1947; (2)En. Sec. 7, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 7, Ch. 225, L. 1961; amd. Sec. 42, Ch. 182, L. 1975; Sec. 71-1007, R.C.M. 1947; R.C.M. 1947, 71-1006, 71-1007.

Cross-References

"Examining board" defined, 39-73-101.

"Silicosis" defined, 39-73-101.

39-73-107. Amount of payments. Subject to the provisions of this chapter and the deductions herein provided, any person who has silicosis, as defined in this chapter, and who has, subject to the regulations and standards of the division of workers' compensation, been determined by the division to be entitled payment under this chapter for silicosis shall be granted a payment by the division of $200 per month, subject to such appropriations as may from time to time be made. If he is receiving payments under The Occupational Disease Act of Montana, as provided by chapter 72 of this title, which are less in the aggregate than $200, then he is entitled to a payment under this chapter of the difference between the amount received under The Occupational Disease Act of Montana, as provided by chapter 72 of this title, and $200 per month. The legislature shall authorize such additional appropriations as may be necessary to make the increased monthly payments provided herein.

History: Ap. p. Sec. 3, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973; Sec. 71-1003, R.C.M. 1947; Ap. p. Sec. 4, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 2, Ch. 216, L. 1947; amd. Sec. 2, Ch. 192, L. 1949; amd. Sec. 1, Ch. 204, L. 1953; amd. Sec. 2, Ch. 252, L. 1955; amd. Sec. 1, Ch. 248, L. 1959; amd. Sec. 4, Ch. 225, L. 1961; amd. Sec. 2, Ch. 267, L. 1965; amd. Sec. 2, Ch. 125, L. 1967; amd. Sec. 2, Ch. 260, L. 1969; amd. Sec. 2, Ch. 105, L. 1971; amd. Sec. 2, Ch. 504, L. 1973; Sec. 71-1004, R.C.M. 1947; R.C.M. 1947, 71-1003(part), 71-1004; amd. Sec. 3, Ch. 559, L. 1981.

Compiler's Comments

1981 Amendment: Changed payments from "$175" to "$200".

Cross-References

"Silicosis" defined, 39-73-101.

39-73-108. Payment of benefits where person entitled is in institution. If any person who is entitled to benefits under this chapter shall be an inmate in any Montana state institution, benefits shall not be paid to him but shall be paid his beneficiary, if any, as defined in 39-71-116(2).

History: En. Sec. 3, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973; R.C.M. 1947, 71-1003(c).

39-73-109. Payment of benefits to surviving spouse. (1) Upon the death of a person receiving payments for silicosis under 39-73-104 or 39-73-108, the surviving spouse, as long as such spouse remains unmarried, is entitled to receive the payments granted the deceased spouse.

(2) A person who otherwise is qualified to receive payments under subsection (1) of this section but whose spouse died prior to March 14, 1974, is hereby made eligible to begin receiving one-half of those payments; provided, however, a person is not eligible for these payments if such spouse's taxable income is $6,800 or more per year.

History: (1)En. 71-1010 by Sec. 1, Ch. 203, L. 1974; Sec. 71-1010, R.C.M. 1947; (2)En. 71-1010.1 by Sec. 1, Ch. 500, L. 1975; Sec. 71-1010.1, R.C.M. 1947; R.C.M. 1947, 71-1010, 71-1010.1; amd. Sec. 91, Ch. 397, L. 1979.

Cross-References

"Silicosis" defined, 39-73-101.

39-73-110. Assistance not assignable or subject to legal process. Except as otherwise provided in this chapter, assistance granted under this chapter is not transferable or assignable, at law or in equity, and none of the money paid or payable under this chapter is subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

History: En. Sec. 18, Part 1, Ch. 82, L. 1937; amd. Sec. 26, Ch. 121, L. 1974; R.C.M. 1947, 71-229.

TITLE 40

FAMILY LAW

Ch.
1. Marriage.
2. Husband and Wife.
3. Reconciliation.
4. Termination of Marriage, Child Custody, Support.
5. Enforcement of Support.
6. Parent and Child.
7. Uniform Child Custody Jurisdiction Act.
8. Adoption.
9. Grandparent Visitation.

CHAPTER 1

MARRIAGE

Part 1 — General Provisions

Section
40-1-101. Purposes.
40-1-102. Uniformity of application and construction.
40-1-103. Formalities.
40-1-104. Application.
40-1-105. Application of the Montana Rules of Civil Procedure.
40-1-106. Parts of code not applicable.
40-1-107. Form of application, license, marriage certificate, and consent.

Part 2 — License Provisions

40-1-201. License application.
40-1-202. License issuance.
40-1-203. Proof of age and medical certificate required.
40-1-204. Contents and form of medical certificate.
40-1-205. Certificates from other states or for military personnel — when acceptable.
40-1-206. Premarital test — approved laboratories — rules.
40-1-207. Examination by health officer.
40-1-208. Penalties.
40-1-209. Expenses.
40-1-210. No license to be issued when applicants under influence of liquor or drug.
40-1-211. Repealed.
40-1-212. Effective date of license.
40-1-213. Judicial approval.

Part 3 — Solemnization

40-1-301. Solemnization and registration.
40-1-302 through 40-1-310 reserved.
40-1-311. Declaration of marriage without solemnization.
40-1-312. Persons who may draft declaration of marriage.
40-1-313. Penalty.
40-1-314 through 40-1-320 reserved.
40-1-321. Registration of marriage.
40-1-322. Certificate and copy presumptive evidence.
40-1-323. Proof of solemnized marriage when no record.

40-1-324. Declaration to be acknowledged and recorded.

Part 4 — Validity of Marriages—Declaration of Invalidity

40-1-401. Prohibited marriages.
40-1-402. Declaration of invalidity.
40-1-403. Validity of common-law marriage.
40-1-404. Putative spouse.

Chapter Cross-References

Montana Rules of Civil Procedure relating to marriage, children, and family, Rules 4D(2)(b), 4D(2)(c), 4D(5)(a)(iii), 20(a), 27(a)(2), M.R.Civ.P. (see Title 25, ch. 20).

Evidence rules relating to marriage, children, and family, 26-1-601, 26-1-602, 26-1-802.

No action for breach of promise, 27-1-602.

Contracts in restraint of marriage void, 28-2-706.

Agreement to marry to be in writing, 28-2-903.

Minors, Title 41.

Bigamy — incest, 45-5-507, 45-5-611.

Marriage under false personation — false swearing, 45-7-202.

Human Rights, Title 49.

Conditions restraining marriage void, 70-1-404.

Part 1

General Provisions

40-1-101. Purposes. This chapter shall be liberally construed and applied to promote its underlying purposes, which are to:

(1) provide adequate procedures for the solemnization and registration of marriage;

(2) strengthen and preserve the integrity of marriage and safeguard family relationships.

History: En. 48-302 by Sec. 2, Ch. 536, L. 1975; R.C.M. 1947, 48-302(part).

40-1-102. Uniformity of application and construction. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it.

History: En. 48-303 by Sec. 3, Ch. 536, L. 1975; R.C.M. 1947, 48-303.

40-1-103. Formalities. Marriage is a personal relationship between a man and a woman arising out of a civil contract to which the consent of the parties is essential. A marriage licensed, solemnized, and registered as provided in this chapter is valid in this state. A marriage may be contracted, maintained, invalidated, or dissolved only as provided by the law of this state.

History: En. 48-304 by Sec. 4, Ch. 536, L. 1975; R.C.M. 1947, 48-304.

Cross-References

Obligations which cannot be specifically enforced — marriage promise, 27-1-412.

Cause of action for breach of promise abolished, 27-1-602.

Consent in general, Title 28, ch. 2, part 3.

Contracts, Title 28, ch. 2 and 3.

Contracts in restraint of marriage generally void, 28-2-706.

What contracts must be in writing — marriage, 28-2-903.

40-1-104. Application. All marriages contracted within this state prior to January 1, 1976, or outside the state, that were valid at the time of the contract or subsequently validated by the laws of the place in which they were contracted or by the domicile of the parties are valid in this state.

History: En. 48-313 by Sec. 13, Ch. 536, L. 1975; R.C.M. 1947, 48-313.

40-1-105. Application of the Montana Rules of Civil Procedure. (1) Except for proceedings coming under the Uniform Child Custody Jurisdiction Act, the Montana Rules of Civil Procedure apply to all proceedings under this chapter, except as otherwise provided in this chapter.

(2) A proceeding for declaration of invalidity of marriage shall be entitled, "In re the Marriage of .... and ....". A custody or support proceeding shall be entitled, "In re the (custody) (support) of ....".

(3) The initial pleading in all proceedings under this chapter shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in other matters under this chapter, shall be denominated as provided in the Montana Rules of Civil Procedure.

(4) In this chapter, "decree" includes "judgment".

History: En. 48-315 by Sec. 15, Ch. 536, L. 1975; amd. Sec. 26, Ch. 537, L. 1977; R.C.M. 1947, 48-315(part).

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

Application of the Montana Rules of Civil Procedure to termination of marriage, child custody, and support, 40-4-103.

Procedure — commencement — pleadings — abolition of existing defenses in termination of marriage, 40-4-105.

Uniform Child Custody Jurisdiction Act, Title 40, ch. 7, part 1.

40-1-106. Parts of code not applicable. The provisions of other portions of this code in relation to contracts and the capacity of persons to enter into them have no application to the contract of marriage.

History: En. Sec. 58, Civ. C. 1895; re-en. Sec. 3615, Rev. C. 1907; re-en. Sec. 5708, R.C.M. 1921; Field Civ. C. Sec. 43; re-en. Sec. 5708, R.C.M. 1935; R.C.M. 1947, 48-114.

Cross-References

Cause of action for breach of promise abolished, 27-1-602.

Parties to contracts, Title 28, ch. 2, part 2.

Contracts, Title 28, ch. 2 and 3.

Minors — power to contract, Title 41, ch. 1, part 3.

40-1-107. Form of application, license, marriage certificate, and consent. (1) The director of the department of health and environmental sciences shall prescribe the form for an application for a marriage license, which shall include the following information:

(a) name, sex, address, date and place of birth of each party to the proposed marriage;

(b) if either party was previously married, his name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(c) name and address of the parents or guardian of each party;

(d) whether the parties are related to each other and, if so, their relationship; and

(e) the name and date of birth of any child of whom both parties are parents born prior to the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(2) The director of the department of health and environmental sciences shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage.

History: En. 48-305 by Sec. 5, Ch. 536, L. 1975; R.C.M. 1947, 48-305.

Cross-References

Solemnization and registration — consent to marriage, 40-1-301.

Dissolution of marriage, Title 40, ch. 4, part 1.

Relinquishment of parental rights, 40-6-135.

Child legitimized by marriage of parents, 40-6-203.

Parent-child legal relationship termination, Title 41, ch. 3, part 6.

Duty to furnish information, 50-15-108.

Marriage certificates, 50-15-301.

Part 2

License Provisions

40-1-201. License application. (1) No Montana resident may be joined in marriage within this state until a license has been obtained for that purpose from a clerk of the district court.

(2) A license so issued shall authorize a marriage ceremony to be performed in the county where the license is issued or in any other county of this state.

(3) If both parties are nonresidents of the state, the license may be obtained from the clerk of the district court of the county where the marriage ceremony is to be performed. If one of the persons is a nonresident of the county where the license is to issue, his part of the application may be completed and sworn to or affirmed before the person authorized to accept such applications in the county and state in which he resides.

History: En. Sec. 5, Ch. 232, L. 1963; amd. Sec. 8, Ch. 33, L. 1977; R.C.M. 1947, 48-146; amd. Sec. 1, Ch. 42, L. 1983.

Compiler's Comments

1983 Amendment: At end of (1), deleted "of the county in which one of the parties has resided for at least 5 days immediately prior to making application therefor".

Cross-References

Duties of Clerk of District Court, Title 3, ch. 5, part 5.

Discrimination in issuance of licenses prohibited, 49-3-204.

40-1-202. License issuance. When a marriage application has been completed and signed by both parties to a prospective marriage and at least one party has appeared before the clerk of the district court and paid the marriage license fee of $30, the clerk of the district court shall issue a license to marry and a marriage certificate form upon being furnished:

(1) satisfactory proof that each party to the marriage will have attained the age of 18 years at the time the marriage license is effective or will have attained the age of 16 years and has obtained judicial approval as provided in 40-1-213;

(2) satisfactory proof that the marriage is not prohibited; and

(3) a certificate of the results of any medical examination required by the laws of this state.

History: En. 48-306 by Sec. 6, Ch. 536, L. 1975; R.C.M. 1947, 48-306; amd. Sec. 6, Ch. 677, L. 1979; amd. Sec. 2, Ch. 493, L. 1981.

Compiler's Comments

1981 Amendment: Increased marriage license fee from $25 to $30.

Cross-References

Fees of Clerk of District Court, 25-1-201.

Prohibited marriages, 40-1-401.

Funding for battered spouses grant programs, 40-2-405.

Minors and adults defined, 41-1-101.

Marriage certificates, 50-15-301.

40-1-203. Proof of age and medical certificate required. (1) Before a person authorized by law to issue marriage licenses may issue a marriage license, each applicant therefor shall exhibit to him a birth certificate or other satisfactory evidence of age and, if the applicant is a minor, the approval required by 40-1-213. Each female applicant, unless exempted on medical grounds by rule of the department of health and environmental sciences, shall file with the license issuer a medical certificate from a physician, licensed to practice medicine and surgery in any state or United States territory, or any other person authorized by laws of Montana to make a medical certificate. The certificate shall state that the applicant has been given a standard serological test, performed not more than 6 months before the date of issuance of the license, and that the report of the results of the serological test has been exhibited to the applicant tested and that the other party to the proposed marriage contract has examined the report of the serological test.

(2) A person who by law is able to obtain a marriage license in this state is also able to give consent to any examinations and tests required by this section. In submitting the blood specimen to the laboratory, the physician or any other person authorized by the laws of Montana to make a medical certificate shall designate that it is a premarital test.

History: En. Sec. 1, Ch. 208, L. 1947; amd. Sec. 1, Ch. 21, L. 1959; amd. Sec. 1, Ch. 248, L. 1973; amd. Sec. 4, Ch. 33, L. 1977; R.C.M. 1947, 48-134; amd. Sec. 1, Ch. 33, L. 1979; amd. Sec. 1, Ch. 228, L. 1981; amd. Sec. 1, Ch. 154, L. 1983.

Compiler's Comments

1983 Amendment: Near middle of (1), substituted "Each female applicant, unless exempted on medical grounds . . . shall file with the license issuer" for "and shall file with him"; increased the time period a test is valid from 20 days to 6 months; near end of (1), after "applicant" inserted "tested"; and made minor changes in phraseology.

1981 Amendment: Deleted "duly qualified" between "medical certificate from a" and "physician" in (1); deleted "an examination, including" before "a standard serological test" in (1); substituted "performed" for "made" following "standard serological test" in (1).

Cross-References

General duties of Clerk of the District Court, 3-5-501.

Declaration of invalidity, 40-1-402.

Minors and adults defined, 41-1-101.

Birth certificate to be filed, 50-15-201.

Serological test for syphilis, 50-18-104.

Certificate of freedom from venereal disease not to be issued, 50-18-111.

40-1-204. Contents and form of medical certificate. (1) The medical certificate shall contain a statement from the person in charge of the laboratory making the test or authorized to make such reports, setting forth:

(a) the name of the test;

(b) the date it was made;

(c) the name and address of the physician or other person authorized under the laws of Montana to make the test;

(d) to whom the test was sent; and

(e) the name of the person whose blood was tested.

(2) In the event that an error is discovered in the results of the test, such results will be expunged from the records of the department of health and environmental sciences.

(3) (a) The certificate and statement shall be on a form to be provided and distributed by the department of health and environmental sciences to all

county clerks of the court in the state and to laboratories in this state that are:

(i) operated by the armed forces or the public health service of the United States; or

(ii) approved by the department.

(b) This form is hereinafter referred to in 40-1-205 through 40-1-209 as "the certificate form".

History: **En. Sec. 2, Ch. 208, L. 1947; amd. Sec. 104, Ch. 349, L. 1974; amd. Sec. 5, Ch. 33, L. 1977; R.C.M. 1947, 48-135; amd. Sec. 2, Ch. 154, L. 1983.**

Compiler's Comments

1983 Amendment: In (1)(e), after "name" deleted "and address"; at end of (3)(a), inserted "that are:"; inserted (3)(a)(i).

Cross-References

Certificates, 50-15-109.

Certificate of freedom from venereal disease not to be issued, 50-18-111.

40-1-205. Certificates from other states or for military personnel — when acceptable. Certificate forms provided by other states having comparable laws will be accepted for persons who have received a standard serological test outside of Montana if such tests are performed not more than 6 months before the issuance of a marriage license. Certificates provided by the United States armed forces will be accepted for military personnel if such certificates are signed by a medical officer commissioned in the United States armed forces or United States public health service and the certificates state the examinations are standard serological tests and were performed not more than 6 months before the issuance of the marriage license.

History: **En. Sec. 3, Ch. 208, L. 1947; amd. Sec. 2, Ch. 248, L. 1973; R.C.M. 1947, 48-136; amd. Sec. 2, Ch. 228, L. 1981; amd. Sec. 1, Ch. 25, L. 1985.**

Compiler's Comments

1985 Amendment: Changed "20 days" to "6 months" in two places.

1981 Amendment: Deleted "been examined and who have" before "received a standard serological test" and "examinations and" before "tests are performed" in the first sentence.

Cross-References

Serological test for syphilis, 50-18-104.

40-1-206. Premarital test — approved laboratories — rules. (1) For the purpose of 40-1-203 through 40-1-209, a standard serological test shall be a test for rubella immunity which is approved by the department of health and environmental sciences.

(2) The standard serological test is acceptable for the purposes of 40-1-203 through 40-1-209 only if it is performed by one of the following:

(a) the laboratory of the department;

(b) a laboratory approved by the department;

(c) a laboratory operated by any other state; or

(d) a laboratory operated by the United States public health service or the United States armed forces.

(3) The standard serological test may be made on request at the laboratory of the department of health and environmental sciences.

(4) The department of health and environmental sciences shall adopt reasonable rules for:

(a) reports to be submitted by any laboratory making tests and the manner of furnishing the reports to the certifying physician and the state; and

(b) exemptions, on medical grounds, from the premarital serological test.

History: En. Sec. 4, Ch. 208, L. 1947; amd. Sec. 3, Ch. 248, L. 1973; amd. Sec. 6, Ch. 33, L. 1977; R.C.M. 1947, 48-137; amd. Sec. 3, Ch. 154, L. 1983.

Compiler's Comments

1983 Amendment: In (1), after "rubella immunity" deleted "and syphilis, as" and inserted "which is"; at end of (1), deleted "An unapproved laboratory shall be"; inserted (2); at beginning of (2)(c) and (2)(d), inserted "a laboratory operated by"; in (2)(d), following "armed forces" deleted "laboratory shall be considered approved for the purposes of 40-1-203 through 40-1-209. Such laboratory"; at beginning of (3), inserted "The standard serological"; inserted (4)(b); and rearranged phrases and made other minor changes in phraseology.

Cross-References

Serological test for syphilis, 50-18-104.

40-1-207. Examination by health officer. Any applicant for a marriage license may, if he so chooses, be examined free of charge by the county physician or county health officer.

History: En. Sec. 5, Ch. 208, L. 1947; R.C.M. 1947, 48-138.

Cross-References

Serological test for syphilis, 50-18-104.

Powers and duties of health officers, 50-18-107.

40-1-208. Penalties. (1) An applicant for a marriage license, a physician or other person authorized by the laws of Montana to make a medical certificate or any person in charge of or authorized to make reports or statements for a laboratory who misrepresents his identity or any of the facts called for by the certificate form prescribed by 40-1-203 through 40-1-205, any licensing officer who issues a marriage license without having received the certificate form, if required, or who has reason to believe that any of the facts on the certificate form have been misrepresented and nevertheless issues a marriage license, or any person who otherwise fails to comply with the provisions of 40-1-203 through 40-1-209 is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $100.

(2) Medical certificates, laboratory statements or reports, and applications referred to in 40-1-203 through 40-1-209 are confidential and may not be divulged to or open to inspection by any person other than state or local health officers or their representatives. A person who divulges such information or opens to inspection such certificates, statements, reports, or applications, without authority, to any person not by law entitled to the same is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $100.

History: En. Sec. 6, Ch. 208, L. 1947; amd. Sec. 7, Ch. 33, L. 1977; R.C.M. 1947, 48-139; amd. Sec. 4, Ch. 154, L. 1983.

Compiler's Comments

1983 Amendment: Near middle of (1), following "certificate form" inserted "if required".

Cross-References

Misdemeanors — classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Permissible release of information concerning infected persons, 50-18-109.

Violation a misdemeanor, 50-18-113.

40-1-209. Expenses. The department of health and environmental sciences shall provide the necessary printing and pay the necessary expenses relative to the checking and approval of laboratories, clerical and technical assistance involved in the administration of 40-1-203 through 40-1-209, and other expenditures necessary in carrying out the provisions and purposes of

40-1-203 through 40-1-209. All claims for such expenses shall be submitted for approval and audit to the department of health and environmental sciences and shall be paid in accordance with law.

History: **En. Sec. 7, Ch. 208, L. 1947; amd. Sec. 104, Ch. 349, L. 1974; R.C.M. 1947, 48-140.**

Cross-References

Rules of Department binding, 50-18-105.

40-1-210. No license to be issued when applicants under influence of liquor or drug. No license to marry shall be issued if, at the time of making application, either of the applicants is under the influence of intoxicating liquor or narcotic drug.

History: **En. Sec. 6, Ch. 232, L. 1963; R.C.M. 1947, 48-147.**

Cross-References

Declaration of invalidity, 40-1-402.

40-1-211. Repealed. Sec. 1, Ch. 124, L. 1979.

History: **En. Sec. 7, Ch. 232, L. 1963; R.C.M. 1947, 48-148.**

40-1-212. Effective date of license. A license to marry becomes effective throughout this state 3 days after the date of issuance, unless the judge of the district court orders that the license is effective when issued, and expires 180 days after it becomes effective.

History: **En. 48-307 by Sec. 7, Ch. 536, L. 1975; R.C.M. 1947, 48-307.**

40-1-213. Judicial approval. (1) The district court may order the clerk of the district court to issue a marriage license and a marriage certificate form to a party aged 16 or 17 years who has no parent capable of consenting to his marriage or has the consent of both parents or of the parent having the actual care, custody, and control to his marriage, if capable of giving consent, or of his guardian. The court must require both parties to participate in a period of marriage counseling involving at least two separate counseling sessions not less than 10 days apart with a designated counselor as a condition of the order for issuance of a marriage license and a marriage certificate form under this section.

(2) A marriage license and a marriage certificate form may be issued under this section only if the court finds that the underaged party is capable of assuming the responsibilities of marriage and the marriage will serve his best interest. Pregnancy alone does not establish that the best interest of the party will be served.

(3) The district court shall authorize performance of a marriage by proxy upon the showing required by the provisions on solemnization.

History: **En. 48-308 by Sec. 8, Ch. 536, L. 1975; R.C.M. 1947, 48-308; amd. Sec. 1, Ch. 183, L. 1979.**

Cross-References

Minors and adults defined, 41-1-101.

Release of information by physician concerning pregnant minor, 41-1-402, 41-1-403.

Part 3

Solemnization

40-1-301. Solemnization and registration. (1) A marriage may be solemnized by a judge of a court of record, by a public official whose powers include solemnization of marriages, by a mayor, city judge, or justice of the peace, by a tribal judge, or in accordance with any mode of solemnization recognized by any religious denomination, Indian nation or tribe, or native group. Either the person solemnizing the marriage or, if no individual acting alone solemnized the marriage, a party to the marriage shall complete the marriage certificate form and forward it to the clerk of the district court.

(2) If a party to a marriage is unable to be present at the solemnization, he may authorize in writing a third person to act as his proxy. If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage, he may solemnize the marriage by proxy. If he is not satisfied, the parties may petition the district court for an order permitting the marriage to be solemnized by proxy.

(3) The solemnization of the marriage is not invalidated by the fact that the person solemnizing the marriage was not legally qualified to solemnize it, if either party to the marriage believed him to be so qualified.

History: En. 48-309 by Sec. 9, Ch. 536, L. 1975; amd. Sec. 9, Ch. 33, L. 1977; R.C.M. 1947, 48-309(1), (2), (4); amd. Sec. 1, Ch. 247, L. 1979; amd. Sec. 3, Ch. 348, L. 1985.

Compiler's Comments

1985 Amendment: In (1) in first sentence, inserted "city judge".

Cross-References

Powers of judicial officers, Title 3, ch. 1, part 4.

Voting corporate shares by proxy, 35-1-506.

Nonprofit corporations — voting by proxy, 35-2-507.

Form of application, license, marriage certificate, and consent, 40-1-107.

Powers of attorney, Title 72, ch. 5, part 5.

40-1-302 through 40-1-310 reserved.

40-1-311. Declaration of marriage without solemnization. (1) Persons desiring to consummate a marriage by written declaration in this state without the solemnization provided for in 40-1-301 must, prior to executing the declaration, secure the medical certificate required by this chapter, which shall be firmly attached to the declaration and shall be filed by the clerk of the district court in the county where the contract was executed.

(2) A declaration of marriage must contain substantially the following:

(a) the names, ages, and residences of the parties;

(b) the fact of marriage;

(c) the name of father and maiden name of mother of both parties and address of each;

(d) a statement that both parties are legally competent to enter into the marriage contract.

(3) The declaration must be subscribed by the parties and attested by at least two witnesses and formally acknowledged before the clerk of the district court of the county.

(4) The fee for filing a declaration is $30 and shall be paid to the clerk at time of filing.

History: En. Sec. 85, Civ. C. 1895; re-en. Sec. 3631, Rev. C. 1907; re-en. Sec. 5724, R.C.M. 1921; Cal. Civ. C. Sec. 75; re-en. Sec. 5724, R.C.M. 1935; amd. Sec. 1, Ch. 275, L. 1959; amd. Sec. 44, Ch. 536, L. 1975; R.C.M. 1947, 48-130; amd. Sec. 2, Ch. 33, L. 1979; amd. Sec. 2, Ch. 12, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (4).

Cross-References

General duties of Clerk of the District Court, 3-5-501.

Fee for filing declaration of marriage, 25-1-201.
Who may contract, 28-2-201.
Proof of age and medical certificate required, 40-1-203.
Validity of common-law marriage, 40-1-403.
Funding of battered spouses grant program, 40-2-405.

40-1-312. Persons who may draft declaration of marriage. It shall be unlawful for any person other than the parties to such written declaration to draw any such declaration of marriage unless he shall have been duly licensed to practice law in the state of Montana.

History: En. Sec. 2, Ch. 275, L. 1959; R.C.M. 1947, 48-130.1.

Cross-References
Attorney certification, 37-61-206.

40-1-313. Penalty. Any person violating the provisions of 40-1-311 or 40-1-312, upon conviction, shall be subject to a fine of not less than $300 or 6 months in a county jail, or both.

History: En. Sec. 3, Ch. 275, L. 1959; R.C.M. 1947, 48-130.2.

Cross-References
Misdemeanor defined, 45-2-101.

40-1-314 through 40-1-320 reserved.

40-1-321. Registration of marriage. (1) Upon receipt of the marriage certificate, the clerk of the district court shall register the marriage.

(2) Every person solemnizing a marriage who shall neglect to make and deliver to the clerk of the district court a certificate thereof within 30 days after having solemnized such marriage shall forfeit for such neglect a sum not less than $10 or more than $50; and any clerk of the district court who shall neglect to record such certificate so delivered within 1 month after its delivery shall forfeit the like penalty.

History: (1)En. 48-309 by Sec. 9, Ch. 536, L. 1975; amd. Sec. 9, Ch. 33, L. 1977; Sec. 48-309, R.C.M. 1947; (2)En. Sec. 7, p. 409, Bannack Stat.; re-en. Sec. 7, p. 520, Cod. Stat. 1871; re-en. Sec. 860, 5th Div. Rev. Stat. 1879; re-en. Sec. 1421, 5th Div. Comp. Stat. 1887; amd. Sec. 79, Civ. C. 1895; re-en. Sec. 3625, Rev. C. 1907; re-en. Sec. 5718, R.C.M. 1921; re-en. Sec. 5718, R.C.M. 1935; Sec. 48-124, R.C.M. 1947; R.C.M. 1947, 48-124, 48-309(3).

Cross-References
Clerk of Court — general duties, Title 3, ch. 5, part 5.
Manner of keeping records and storing documents, 7-4-2221.
Documents subject to recording, 7-4-2613.
Index to records of marriage certificates, 7-4-2619.

40-1-322. Certificate and copy presumptive evidence. The original certificate of marriage and the record thereof by the clerk of the district court or a copy of such record duly certified by the clerk of the district court shall be received by all courts in all places as presumptive evidence of such marriage.

History: En. Sec. 10, p. 410, Bannack Stat.; re-en. Sec. 10, p. 521, Cod. Stat. 1871; re-en. Sec. 863, 5th Div. Rev. Stat. 1879; re-en. Sec. 1424, 5th Div. Comp. Stat. 1887; amd. Sec. 81, Civ. C. 1895; re-en. Sec. 3627, Rev. C. 1907; re-en. Sec. 5720, R.C.M. 1921; re-en. Sec. 5720, R.C.M. 1935; amd. Sec. 3, Ch. 33, L. 1977; R.C.M. 1947, 48-126.

Cross-References
Clerk of Court — duties generally, Title 3, ch. 5, part 5.
Definition and examples of disputable presumptions, 26-1-602.

40-1-323. Proof of solemnized marriage when no record. If the record of the solemnization of a marriage heretofore entered into has been lost or destroyed and not known to exist, the parties may join in a written declaration of such marriage, substantially showing:

(1) the names, ages, and residences of the parties;

(2) the date and place of marriage and other pertinent facts of the marriage;

(3) that the record of the solemnized marriage has become lost or destroyed, as the case may be, and is not known to exist.

History: En. Sec. 86, Civ. C. 1895; re-en. Sec. 3632, Rev. C. 1907; re-en. Sec. 5725, R.C.M. 1921; Cal. Civ. C. Sec. 76; re-en. Sec. 5725, R.C.M. 1935; amd. Sec. 1, Ch. 276, L. 1959; R.C.M. 1947, 48-131.

Cross-References

Validity of common-law marriage, 40-1-403.

40-1-324. Declaration to be acknowledged and recorded. The written declaration of marriage provided for in 40-1-323 shall be attested by at least two witnesses and formally acknowledged by an official authorized to administer oaths in the state of Montana. The filing of the declaration with the clerk of the district court in the county of the residence of the parties shall serve as an official record of the marriage of the parties.

History: En. Sec. 87, Civ. C. 1895; re-en. Sec. 3633, Rev. C. 1907; re-en. Sec. 5726, R.C.M. 1921; Cal. Civ. C. Sec. 77; re-en. Sec. 5726, R.C.M. 1935; amd. Sec. 2, Ch. 276, L. 1959; R.C.M. 1947, 48-132.

Cross-References

Officers who may administer oaths, 1-6-101, 3-1-402.

Duties of Clerk of Court, Title 3, ch. 5, part 5.

Validity of common-law marriage, 40-1-403.

Part 4

Validity of Marriages — Declaration of Invalidity

40-1-401. Prohibited marriages. (1) The following marriages are prohibited:

(a) a marriage entered into prior to the dissolution of an earlier marriage of one of the parties;

(b) a marriage between an ancestor and a descendant or between a brother and a sister, whether the relationship is by the half or the whole blood, or between first cousins;

(c) a marriage between an uncle and a niece or between an aunt and a nephew, whether the relationship is by the half or the whole blood.

(2) Parties to a marriage prohibited under this section who cohabit after removal of the impediment are lawfully married as of the date of the removal of the impediment.

(3) Children born of a prohibited marriage are legitimate.

History: En. 48-310 by Sec. 10, Ch. 536, L. 1975; R.C.M. 1947, 48-310.

Cross-References

Presumption of legitimacy, 26-1-602.

Legitimacy of children born in wedlock, 40-6-201.

Incest, 45-5-507.

Bigamy, 45-5-611.

Marrying a bigamist, 45-5-612.

Declaration of invalidity — vital statistics, 50-15-302.

40-1-402. Declaration of invalidity. (1) The district court shall enter its decree declaring the invalidity of a marriage entered into under the following circumstances:

(a) a party lacked capacity to consent to the marriage at the time the marriage was entered into, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other incapacitating substances, or a party was induced to enter into a marriage by force or duress or by fraud involving the essentials of marriage;

(b) a party lacks the physical capacity to consummate the marriage by sexual intercourse and at the time the marriage was entered into the other party did not know of the incapacity;

(c) a party was under the age of 16 years or was aged 16 or 17 years and did not have the consent of his parents or guardian or judicial approval; or

(d) the marriage is prohibited.

(2) A declaration of invalidity under subsections (1)(a) through (1)(c) may be sought by any of the following persons and must be commenced within the times specified, but in no event may a declaration of invalidity be sought after the death of either party to the marriage:

(a) for lack of capacity to consent because of mental incapacity or infirmity, no later than 1 year after the petitioner obtained knowledge of the described condition;

(b) for lack of capacity to consent because of the influence of alcohol, drugs, or other incapacitating substances, no later than 1 year after the petitioner obtained knowledge of the described condition;

(c) for lack of capacity to consent because of force, duress, or fraud, no later than 2 years after the petitioner obtained knowledge of the described condition;

(d) for the reason set forth in subsection (1)(b), by either party, no later than 4 years after the petitioner obtained knowledge of the described condition;

(e) for the reason set forth in subsection (1)(c), by the underaged party, his parent or guardian, prior to the time the underaged party reaches the age at which he could have married without satisfying the omitted requirement.

(3) A declaration of invalidity for the reason set forth in subsection (1)(d) may be sought by either party, the legal spouse in case of a bigamous marriage, the county attorney, or a child of either party, at any time prior to the death of one of the parties.

(4) Children born of a marriage declared invalid are legitimate.

(5) Unless the court finds, after a consideration of all relevant circumstances, including the effect of a retroactive decree on third parties, that the interests of justice would be served by making the decree not retroactive, it shall declare the marriage invalid as of the date of the marriage. The provisions of chapter 4 relating to property rights of the spouses, maintenance, support, and custody of children on dissolution of marriage are applicable to nonretroactive decrees of invalidity.

History: En. 48-311 by Sec. 11, Ch. 536, L. 1975; amd. Sec. 1, Ch. 279, L. 1977; R.C.M. 1947, 48-311.

Cross-References

County Attorney — other duties, 7-4-2717.
Presumption of legitimacy, 26-1-602.
Who may contract, 28-2-201.
Consent in general, Title 28, ch. 2, part 3.

Circumstances which affect validity of apparent consent, Title 28, ch. 2, part 4.
Proof of age and medical certificate required, 40-1-203.
Judicial approval, 40-1-213.
Defenses to divorce abolished, 40-4-105.
Legitimacy of children born in wedlock, 40-6-201.
Incest, 45-5-507.
Bigamy, 45-5-611.
Marrying a bigamist, 45-5-612.
Revocation of provision for spouse in will by divorce or annulment, 72-2-322.

40-1-403. Validity of common-law marriage. Common-law marriages are not invalidated by this chapter. Declarations of marriage pursuant to 40-1-311 through 40-1-313, 40-1-323, and 40-1-324 are not invalidated by this chapter.

History: En. 48-314 by Sec. 14, Ch. 536, L. 1975; R.C.M. 1947, 48-314.

Cross-References
Presumption of marriage, 26-1-602.

40-1-404. Putative spouse. Any person who has cohabited with another to whom he is not legally married in the good-faith belief that he was married to that person is a putative spouse until knowledge of the fact that he is not legally married terminates his status and prevents acquisition of further rights. A putative spouse acquires the rights conferred upon a legal spouse, including the right to maintenance following termination of his status, whether or not the marriage is prohibited (40-1-401) or declared invalid (40-1-402). If there is a legal spouse or other putative spouses, rights acquired by a putative spouse do not supersede the rights of the legal spouse or those acquired by other putative spouses, but the court shall apportion property, maintenance, and support rights among the claimants as appropriate in the circumstances and in the interests of justice.

History: En. 48-312 by Sec. 12, Ch. 536, L. 1975; R.C.M. 1947, 48-312.

Cross-References
"Good faith" defined, 30-1-201.
Obligation of good faith — U.C.C., 30-1-203.
Disposition of property, 40-4-202.
Maintenance, 40-4-203.
Child support, 40-4-204.
UPC — effect of divorce, annulment, or separation decree, 72-2-103.
UPC — unintentional omission of spouse or child, Title 72, ch. 2, part 6.
UPC — elective share of surviving spouse, Title 72, ch. 2, part 7.

CHAPTER 2

HUSBAND AND WIFE

Part 1 — Joint Interests, Obligations, and Powers

Section
40-2-101. Mutual obligations of husband and wife.
40-2-102. Duties of husband and wife as to support.
40-2-103. Support of spouse.
40-2-104. Liability of married person when abandoned by spouse.
40-2-105. Husband and wife as joint tenants.
40-2-106. Liability for acts or debts of spouse.
40-2-107. May sue and be sued.
40-2-108. Married person as personal representative, guardian, conservator, or trustee.
40-2-109. Right of person to sue spouse for intentional tort.

Part 2 — Individual Property

40-2-201. When husband's and wife's interests separate.

40-2-202. Individual property of married person.
40-2-203. Inventory of individual personal property of married person.
40-2-204. Effect of filing inventory.
40-2-205. Earnings and accumulations of married person.
40-2-206. Same — when separated.
40-2-207. Work and labor of married person.
40-2-208. Debts of spouse contracted before marriage.
40-2-209. Individual property of married person — how far liable.
40-2-210. Necessity determined by standard of living.

Part 3 — Power of Married Persons to Contract

40-2-301. Husband and wife may contract.
40-2-302. Liability of spouse.
40-2-303. Alteration of legal relation by contract — separation agreement.
40-2-304. Consideration for separation.
40-2-305 through 40-2-310 reserved.
40-2-311. Rights of husband and wife — how governed.
40-2-312. Marriage settlement contracts — how executed.
40-2-313. Contract to be acknowledged and recorded.
40-2-314. Effect of recording.
40-2-315. Marriage settlement by minors.

Part 4 — Battered Spouses Grant Programs

40-2-401. Battered spouses and domestic violence grant program created.
40-2-402. Duties of department.
40-2-403. Authorized grantees — criteria for grants.
40-2-404. Authorized services of programs.
40-2-405. Funding.

Chapter Cross-References

Residence of spouses, 1-1-215.

Acknowledgment by married person, 1-5-206.

Tax law relating to family, 7-16-4105, 15-6-201, 15-7-307, 15-10-103, 15-30-112, 15-30-113, 15-30-122, 15-30-123, 15-30-134, 15-30-142.

Husband and wife prisoners may be put in same room, 7-32-2221.

Person's residence presumed to be that of his family for voting purposes, 13-1-112.

Beneficiaries under PERS, 19-3-1301, 19-3-1302.

Civil procedure provisions relating to families, 25-9-102, 27-19-306, 70-19-102, 70-27-111, 70-31-201.

Execution of judgment when family property and interest involved, Title 25, ch. 13.

Montana Rules of Civil Procedure relating to marriage, children, and family, Rules 4D(2)(b), 4D(2)(c), 4D(5)(a)(iii), 20(a), 27(a)(2), M.R.Civ.P. (see Title 25, ch. 20).

When appeal may be taken, Rule 1(c), M.R.App.Civ.P., (see Title 25, ch. 21).

Evidence rules relating to marriage, children, and family, 26-1-601, 26-1-602, 26-1-802.

No cause of action for alienation of affections, 27-1-601.

Contracts — what constitutes duress, 28-2-402, 28-2-403.

Agreement to marry to be in writing, 28-2-903.

Assignment of wages by married person, 31-1-306.

Labor law concerning family members, 31-1-306, 39-1-102 through 39-1-104, 39-2-101, 39-3-201, 39-3-203, 39-3-204, 39-3-406, 39-6-101, 39-6-102, 39-7-103; Title 39, ch. 7, part 2; 39-33-101 through 39-33-103, 53-7-201, 53-7-202.

Banking law concerning husband and wife, 32-1-107, 32-1-442.

Insurable interest, Title 33, ch. 15, part 2.

Nursing by members of family, 37-8-103.

Payment of unemployment compensation, 39-51-102, 39-51-201 through 39-51-206, 39-51-601, 39-51-2301 through 39-51-2308.

Workers' compensation law relating to families, 39-71-104, 39-71-116 through 39-71-122, 39-71-602, 39-71-723, 39-71-737, 39-71-741, 39-71-742, 39-71-2203.

General criminal provisions relating to families, 45-1-205, 45-2-101, 45-2-211.

Offenses against the person of a family member, 45-5-304, 45-5-507, 45-5-511, 45-5-602 through 45-5-604, 45-5-611, 45-5-612, 45-5-621 through 45-5-624, 50-20-104 through 50-20-108.

Offenses against public order by family members, 45-8-113, 45-8-344.

Criminal procedure provisions relating to family members, 46-3-204, 46-16-212, 46-23-1022, 46-23-1102, 61-12-703.

Human Rights, Title 49.

Discrimination based on marital status, 49-2-303, 49-3-103;.

Discrimination in insurance and retirement plans prohibited, 49-2-309.

Reporting of death, marriages, divorces, annulments, etc., 50-15-108.

General welfare provisions relating to the family, 53-2-101, 53-2-201, 53-2-206, 53-2-610, 53-2-611; Title 53, ch. 3.

Automobile registration may be transferred to heir without letters of administration — when, 61-3-201.

Property law concerning husband and wife, 70-1-306, 70-1-307, 70-1-314, 70-1-404, 70-1-420, 70-1-422, 70-15-303, 70-20-106, 70-20-107.

Homesteads, Title 70, ch. 32.

Distribution of estate property, Title 72, ch. 3, part 9.

Housing Act of 1975, Title 90, ch. 6.

Part 1

Joint Interests, Obligations, and Powers

40-2-101. Mutual obligations of husband and wife. Husband and wife contract toward each other obligations of mutual respect, fidelity, and support.

History: En. Sec. 210, Civ. C. 1895; re-en. Sec. 3690, Rev. C. 1907; re-en. Sec. 5782, R.C.M. 1921; Cal. Civ. C. Sec. 155; Field Civ. C. Sec. 75; re-en. Sec. 5782, R.C.M. 1935; R.C.M. 1947, 36-101.

Cross-References

Spousal privilege, 26-1-802.

How obligations arise, 28-1-102.

Contracts, Title 28, ch. 2, parts 2 and 3.

Competency of spouses, 46-16-212.

40-2-102. Duties of husband and wife as to support. Insofar as each is able, the husband and wife shall support each other out of their property and labor. As used in this section, the word "support" includes the nonmonetary support provided by a spouse as homemaker.

History: En. Sec. 212, Civ. C. 1895; re-en. Sec. 3692, Rev. C. 1907; re-en. Sec. 5784, R.C.M. 1921; Field Civ. C. Sec. 77; re-en. Sec. 5784, R.C.M. 1935; amd. Sec. 1, Ch. 293, L. 1975; R.C.M. 1947, 36-103.

Cross-References

When husband's and wife's interests separate, 40-2-201.

Earnings and accumulations — same — when separated, 40-2-206.

Nonsupport, 45-5-621.

40-2-103. Support of spouse. If a married person who is able neglects to make adequate provision for the financial support of his spouse, except in the cases mentioned in 40-2-104, any other person may in good faith supply the spouse with articles necessary for support and recover the reasonable value thereof from the married person who has failed to provide such support.

History: En. Sec. 244, Civ. C. 1895; re-en. Sec. 3724, Rev. C. 1907; re-en. Sec. 5800, R.C.M. 1921; Cal. Civ. C. Sec. 174; Field Civ. C. Sec. 84; re-en. Sec. 5800, R.C.M. 1935; amd. Sec. 12, Ch. 293, L. 1975; R.C.M. 1947, 36-119.

Cross-References

Cases in which property may be attached, 27-18-101.

Agency, Title 28, ch. 10.

"Good faith" defined, 30-1-201.

Minor cannot disaffirm contract for necessaries, 41-1-305.

Nonsupport, 45-5-621.

40-2-104. Liability of married person when abandoned by spouse. A married person abandoned by his spouse is not liable for the spouse's support until the spouse offers to return, unless the spouse was justified by the person's misconduct in abandoning him, nor is a married person liable for support of a spouse who is living separate from him by agreement, unless such support is stipulated in the agreement.

History: **En. Sec. 245, Civ. C. 1895; re-en. Sec. 3725, Rev. C. 1907; re-en. Sec. 5801, R.C.M. 1921; Cal. Civ. C. Sec. 175; Based on Field Civ. C. Sec. 85; re-en. Sec. 5801, R.C.M. 1935; amd. Sec. 13, Ch. 293, L. 1975; R.C.M. 1947, 36-120.**

Cross-References

Extent to which existing legal or moral obligation is good consideration, 28-2-802.

Separation agreement, 40-4-201.

Nonsupport, 45-5-621.

40-2-105. Husband and wife as joint tenants. A husband and wife may hold real or personal property together, jointly or in common.

History: **En. Sec. 217, Civ. C. 1895; re-en. Sec. 3697, Rev. C. 1907; re-en. Sec. 5789, R.C.M. 1921; Cal. Civ. C. Sec. 161; Field Civ. C. Sec. 82; re-en. Sec. 5789, R.C.M. 1935; R.C.M. 1947, 36-108.**

Cross-References

Joint obligations, Title 28, ch. 1, part 3.

Property joint tenancy and tenancy in common, Title 70, ch. 1, part 3.

40-2-106. Liability for acts or debts of spouse. Neither husband nor wife, as such, is answerable for the acts of the other or liable for the debts contracted by the other; provided, however, that the expenses for necessaries of the family and of the education of the children are chargeable upon the property of both husband and wife, or either of them, and in relation thereto they may be sued jointly or separately.

History: **En. Sec. 218, Civ. C. 1895; re-en. Sec. 3698, Rev. C. 1907; amd. Sec. 1, Ch. 129, L. 1915; re-en. Sec. 5790, R.C.M. 1921; re-en. Sec. 5790, R.C.M. 1935; R.C.M. 1947, 36-109.**

Cross-References

Judgment for or against married person, 25-9-102.

Redemption by debtor from spouse, 25-13-805.

Effect of redemption by debtor or debtor's spouse, 25-13-809.

Extent to which existing legal or moral obligation is good consideration, 28-2-802.

Obligations of parents for the support and education of their children, 40-6-211.

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

When parent liable for necessaries supplied to child, 40-6-215.

When parent not liable for support furnished child, 40-6-216.

Married person not bound for support of spouse's children by former marriage, 40-6-217.

Minor cannot disaffirm contract for necessaries, 41-1-305.

40-2-107. May sue and be sued. A married person may sue and be sued in the same manner as if he were sole.

History: **En. Sec. 1444, 5th Div. Comp. Stat. 1887; re-en. Sec. 253, Civ. C. 1895; re-en. Sec. 3733, Rev. C. 1907; re-en. Sec. 5809, R.C.M. 1921; re-en. Sec. 5809, R.C.M. 1935; amd. Sec. 15, Ch. 293, L. 1975; R.C.M. 1947, 36-128.**

Cross-References

Capacity of married person to be a party, 25-5-201.

Who may defend when spouse sued, 25-5-202.

Judgment for or against married person, 25-9-102.

Capacity to sue or be sued, Rule 17(b), M.R.Civ.P. (see Title 25, ch. 20).

Spousal privilege, 26-1-802.

Action by parent or guardian for injury to or death of child or ward, 27-1-512.

Action for wrongful death of adult, 27-1-513.

Who may sue for whose seduction, 27-1-514.

Cause of action for alienation of affections abolished, 27-1-601.

Testimony of spouse admissible in promotion of prostitution cases, 45-5-604.

40-2-108. Married person as personal representative, guardian, conservator, or trustee. A married person may be a personal representative, guardian, conservator, or trustee and may bind himself and the estate he represents without any act or assent on the part of the person's spouse.

History: **En. Sec. 1443, 5th Div. Comp. Stat. 1887; re-en. Sec. 252, Civ. C. 1895; re-en. Sec. 3732, Rev. C. 1907; re-en. Sec. 5808, R.C.M. 1921; re-en. Sec. 5808, R.C.M. 1935; amd. Sec. 14, Ch. 293, L. 1975; R.C.M. 1947, 36-127.**

Cross-References

Personal representative — powers and duties, Title 72, ch. 3, part 6; Title 72, ch. 12, part 5.

Conservators generally, Title 72, ch. 5, parts 1 and 4.

Guardians of minors, Title 72, ch. 5, part 2.

Guardians of incapacitated persons, Title 72, ch. 5, part 3.

Powers of trustee, Title 72, ch. 21.

40-2-109. Right of person to sue spouse for intentional tort. A person has a cause of action against his spouse for damages caused by the spouse's intentional tort against such person, and the common law doctrine of interspousal tort immunity is, to that extent, abolished.

History: En. Sec. 1, Ch. 407, L. 1979.

Cross-References

Capacity to sue or be sued, Rule 17(b), M.R.Civ.P. (see Title 25, ch. 20).

Liability, Title 27, ch. 1, part 7.

Duty of care, 28-1-201.

Part 2

Individual Property

40-2-201. When husband's and wife's interests separate. Neither husband nor wife has any interest in the property of the other, except as mentioned in 40-2-102, but neither can be excluded from the other's dwelling unless enjoined by a court.

History: En. Sec. 213, Civ. C. 1895; re-en. Sec. 3693, Rev. C. 1907; re-en. Sec. 5785, R.C.M. 1921; Cal. Civ. C. Sec. 157; Field Civ. C. Sec. 78; re-en. Sec. 5785, R.C.M. 1935; R.C.M. 1947, 36-104; amd. Sec. 2, Ch. 407, L. 1979.

40-2-202. Individual property of married person. All the property of a married person owned before marriage and that acquired afterwards is his individual property. The married person may, without consent, agreement, and signature of his spouse, convey and transfer his individual property, real or personal, including the fee simple title to real property, or execute a power of attorney for the conveyance and transfer thereof.

History: En. Sec. 220, Civ. C. 1895; re-en. Sec. 3700, Rev. C. 1907; re-en. Sec. 5792, R.C.M. 1921; Cal. Civ. C. Sec. 162; amd. Sec. 1, Ch. 63, L. 1923; re-en. Sec. 5792, R.C.M. 1935; amd. Sec. 3, Ch. 293, L. 1975; R.C.M. 1947, 36-111.

Cross-References

Acknowledgment by married person, 1-5-206, 1-5-207.

Dissolution — disposition of property, 40-4-202.

Transfer of property, Title 70, ch. 1, part 5; Title 70, ch. 20.

Married persons — execution of power in respect to real property, 70-15-303.

Power of attorney of married person — how acknowledged, 70-20-107.

Power of attorney, estates and probate proceedings, Title 72, ch. 5, part 5.

40-2-203. Inventory of individual personal property of married person. A married person's title to and ownership of his individual property may be proved or demonstrated in the same manner that a single person's ownership of or title to his individual property may be proved. Provided, however, that if a married person chooses, he may make out and sign an inventory of his individual personal property, which inventory shall be acknowledged or proved in the same manner required by law for the acknowledgment or proof of a grant of real property and recorded in the office of the county clerk of the county in which the person lives.

History: En. Sec. 221, Civ. C. 1895; re-en. Sec. 3701, Rev. C. 1907; re-en. Sec. 5793, R.C.M. 1921; Cal. Civ. C. Sec. 165; re-en. Sec. 5793, R.C.M. 1935; amd. Sec. 4, Ch. 293, L. 1975; R.C.M. 1947, 36-112.

Cross-References

Acknowledgment by married person, 1-5-206.

Documents subject to recording, 7-4-2613.

Action for quieting title to personal property, 70-2-201.

Partition of personal property, 70-2-211.

40-2-204. Effect of filing inventory. The filing of the inventory in the clerk's office is notice and prima facie evidence of the title of the person so filing.

History: En. Sec. 222, Civ. C. 1895; re-en. Sec. 3702, Rev. C. 1907; re-en. Sec. 5794, R.C.M. 1921; Cal. Civ. C. Sec. 166; re-en. Sec. 5794, R.C.M. 1935; amd. Sec. 5, Ch. 293, L. 1975; R.C.M. 1947, 36-113.

40-2-205. Earnings and accumulations of married person. The earnings and accumulations of a married person are not liable for the debts of that person's spouse except for debts incurred for necessary articles procured for the use and benefit of the married person, his spouse, or minor children.

History: En. Sec. 223, Civ. C. 1895; re-en. Sec. 3703, Rev. C. 1907; re-en. Sec. 5795, R.C.M. 1921; Cal. Civ. C. Sec. 168; re-en. Sec. 5795, R.C.M. 1935; amd. Sec. 6, Ch. 293, L. 1975; R.C.M. 1947, 36-114.

Cross-References

Liability for acts or debts of spouse, 40-2-106.

Obligations of parents for the support and education of their children, 40-6-211.

Allowance to parent, 40-6-212.

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

When parent liable for necessaries supplied to child, 40-6-215.

When parent not liable for support furnished child, 40-6-216.

Minor cannot disaffirm contract for necessaries, 41-1-305.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

40-2-206. Same — when separated. The earnings and accumulations of a married person and of his minor children living with him or in his custody, while he is living separate from his spouse, are the individual property of such person except that, to the extent that a mutual duty of support between the husband and wife as established by 40-2-102 still exists, such earnings and accumulations are liable for debts incurred for necessary articles procured for the use and benefit of the married person, his spouse, or minor children.

History: En. Sec. 224, Civ. C. 1895; re-en. Sec. 3704, Rev. C. 1907; re-en. Sec. 5796, R.C.M. 1921; Cal. Civ. C. Sec. 169; re-en. Sec. 5796, R.C.M. 1935; amd. Sec. 7, Ch. 293, L. 1975; R.C.M. 1947, 36-115.

Cross-References

Liability for acts or debts of spouse, 40-2-106.

Separation agreement, 40-4-201.

Obligations of parents for the support and education of their children, 40-6-211.

Allowance to parent, 40-6-212.

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

When parent liable for necessaries supplied to child, 40-6-215.

When parent not liable for support furnished child, 40-6-216.

Married person not bound for support of spouse's children by former marriage, 40-6-217.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

40-2-207. Work and labor of married person. All work and labor performed by a married person for a person other than his spouse and children shall, unless there is a written agreement on his part to the contrary, be presumed to be performed on his separate account. This section does not affect the liability of earnings for debts incurred for necessary articles procured for the use and benefit of the married person, his spouse, or minor children, as established by 40-2-205, 40-2-206, 40-2-209, and 40-2-210.

History: En. Sec. 1442, 5th Div. Comp. Stat. 1887; re-en. Sec. 225, Civ. C. 1895; re-en. Sec. 3705, Rev. C. 1907; re-en. Sec. 5797, R.C.M. 1921; re-en. Sec. 5797, R.C.M. 1935; amd. Sec. 8, Ch. 293, L. 1975; R.C.M. 1947, 36-116.

Cross-References

Assignment of wages by married person, 31-1-306.

Payment of wages generally, 39-3-204.

Liability for acts or debts of spouse, 40-2-106.

Obligations of parents for the support and education of their children, 40-6-211.

Allowance to parent, 40-6-212.

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

When parent liable for necessaries supplied to child, 40-6-215.

When parent not liable for support furnished child, 40-6-216.

Married person not bound for support of spouse's children by former marriage, 40-6-217.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

40-2-208. Debts of spouse contracted before marriage. The property of a married person is not liable for the debts of the person's spouse contracted before marriage.

History: En. Sec. 226, Civ. C. 1895; re-en. Sec. 3706, Rev. C. 1907; re-en. Sec. 5798, R.C.M. 1921; Cal. Civ. C. Sec. 170; re-en. Sec. 5798, R.C.M. 1935; amd. Sec. 9, Ch. 293, L. 1975; R.C.M. 1947, 36-117.

Cross-References

Redemption by debtor from spouse, 25-13-805.

Effect of redemption by debtor or debtor's spouse, 25-13-809.

Liability for acts or debts of spouse, 40-2-106.

Allowance to parent, 40-6-212.

Married person not bound for support of spouse's children by former marriage, 40-6-217.

40-2-209. Individual property of married person — how far liable. Individual property of a married person listed in an inventory as provided in 40-2-203 and 40-2-204 or otherwise proved to be the individual property of the married person is exempt from all debts and liabilities of that person's spouse, except:

(1) when the debt or liability is for necessary articles procured for the use and benefit of the married person, the spouse, or minor children; or

(2) when the property is in the sole and exclusive possession of the spouse and the creditors have dealt with the spouse in good faith on the credit of the individual property without knowledge that the property does not belong to the spouse.

History: En. Sec. 1, p. 369, Bannack Stat.; re-en. Sec. 1, p. 521, Cod. Stat. 1871; re-en. Sec. 866, 5th Div. Rev. Stat. 1879; re-en. Sec. 1432, 5th Div. Comp. Stat. 1887; amd. Sec. 227, Civ. C. 1895; re-en. Sec. 3707, Rev. C. 1907; re-en. Sec. 5799, R.C.M. 1921; Cal. Civ. C. Sec. 171; re-en. Sec. 5799, R.C.M. 1935; amd. Sec. 10, Ch. 293, L. 1975; R.C.M. 1947, 36-118.

Cross-References

Judgments for or against married person, 25-9-102.

Liability for acts or debts of spouse, 40-2-106.

Obligations of parents for the support and education of their children, 40-6-211.

Allowance to parent, 40-6-212.

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

When parent liable for necessaries supplied to child, 40-6-215.

When parent not liable for support furnished child, 40-6-216.

Married person not bound for support of spouse's children by former marriage, 40-6-217.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

40-2-210. Necessity determined by standard of living. For purposes of determining whether a married person's earnings or individual property are exempt from the debts incurred by the person's spouse, the phrase "necessary articles" includes all such goods and services as are reasonably required to provide for the health, welfare, comfort, and education of the married person, his spouse, and minor children, taking into consideration the earnings, resources, and general standard of living of such persons.

History: En. 36-118.1 by Sec. 11, Ch. 293, L. 1975; R.C.M. 1947, 36-118.1.

Cross-References

Obligations of parents for the support and education of their children, 40-6-211.

When parent liable for necessaries supplied to child, 40-6-215.

Minor cannot disaffirm contract for necessaries, 41-1-305.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

Part 3

Power of Married Persons to Contract

Part Cross-References

Contracts, Title 28, ch. 2 and 3.

40-2-301. Husband and wife may contract. Either husband or wife may enter into any engagement or transaction with the other or with any other person respecting property which either might, if unmarried, subject in transactions between themselves to the general rules which control the actions of persons occupying confidential relations with each other, as defined by the provisions of this code relative to trusts.

History: En. Sec. 214, Civ. C. 1895; re-en. Sec. 3694, Rev. C. 1907; re-en. Sec. 5786, R.C.M. 1921; Cal. Civ. C. Sec. 158; Field Civ. C. Sec. 79; re-en. Sec. 5786, R.C.M. 1935; R.C.M. 1947, 36-105.

Cross-References

Acknowledgment by married person, 1-5-206.

Form of certificate of acknowledgment by married person, 1-5-207.

Who may contract, 28-2-201.

Mutual obligations of husband and wife, 40-2-101.

Separation agreement, 40-4-201.

Grant by married person — how acknowledged, 70-20-106.

Power of attorney of married person — how acknowledged, 70-20-107.

What constitutes one a trustee — confidential relations, 72-20-105.

Trusts in general, Title 72, ch. 20 through 27.

40-2-302. Liability of spouse. The contracts made by a married person in respect to his individual property, labor, or services shall not be binding upon the person's spouse nor render him or his property liable therefor; but the contracting person and that person's individual property shall be liable on such contracts in the same manner as if such person were sole.

History: En. Sec. 1446, 5th Div. Comp. Stat. 1887; re-en. Sec. 254, Civ. C. 1895; re-en. Sec. 3734, Rev. C. 1907; re-en. Sec. 5810, R.C.M. 1921; re-en. Sec. 5810, R.C.M. 1935; amd. Sec. 16, Ch. 293, L. 1975; R.C.M. 1947, 36-129.

Cross-References

Judgment for or against married person, 25-9-102.

Liability for acts or debts of spouse, 40-2-106.

40-2-303. Alteration of legal relation by contract — separation agreement. A husband and wife cannot by any contract with each other alter their legal relation, except as to property and except that they may agree, in writing, to an immediate separation and may make provision for the support of either of them and of their children during such separation.

History: En. Sec. 215, Civ. C. 1895; re-en. Sec. 3695, Rev. C. 1907; re-en. Sec. 5787, R.C.M. 1921; Cal. Civ. C. Sec. 159; Based on Field Civ. C. Sec. 80; re-en. Sec. 5787, R.C.M. 1935; R.C.M. 1947, 36-106.

Cross-References

What is unlawful, 28-2-701.

Contracts which violate policy of the law — exemption from responsibility, 28-2-702.

Restraints upon legal proceedings void, 28-2-708.

What contracts must be in writing, 28-2-903.
Legal separation, 40-4-104.
Separation agreement, 40-4-201.
Waiver of rights by spouse, 72-2-102.

40-2-304. Consideration for separation. The mutual consent of the parties is a sufficient consideration for such an agreement as mentioned in 40-2-303.

History: En. Sec. 216, Civ. C. 1895; re-en. Sec. 3696, Rev. C. 1907; re-en. Sec. 5788, R.C.M. 1921; Cal. Civ. C. Sec. 160; Field Civ. C. Sec. 81; re-en. Sec. 5788, R.C.M. 1935; R.C.M. 1947, 36-107.

Cross-References
What constitutes good consideration, 28-2-801.

40-2-305 through 40-2-310 reserved.

40-2-311. Rights of husband and wife — how governed. The property rights of the husband and wife are governed by parts 1 through 3 of this chapter, unless there is a marriage settlement containing stipulations contrary thereto.

History: En. Sec. 247, Civ. C. 1895; re-en. Sec. 3727, Rev. C. 1907; re-en. Sec. 5803, R.C.M. 1921; Cal. Civ. C. Sec. 177; re-en. Sec. 5803, R.C.M. 1935; R.C.M. 1947, 36-122.

Cross-References
Separation agreement, 40-4-201.
Disposition of property, 40-4-202.

40-2-312. Marriage settlement contracts — how executed. All contracts for marriage settlements must be in writing and executed and acknowledged or proved in like manner as a grant of land is required to be executed and acknowledged or proved.

History: En. Sec. 248, Civ. C. 1895; re-en. Sec. 3728, Rev. C. 1907; re-en. Sec. 5804, R.C.M. 1921; Cal. Civ. C. Sec. 178; re-en. Sec. 5804, R.C.M. 1935; R.C.M. 1947, 36-123.

Cross-References
Acknowledgment by married person, 1-5-206, 1-5-207.
What contracts must be in writing, 28-2-903.
Separation agreement, 40-4-201.
Grant by married person — how acknowledged, 70-20-106.

40-2-313. Contract to be acknowledged and recorded. When such contract is acknowledged or proved, it must be recorded in the office of the county clerk of every county in which any real estate which is granted or affected by such contract may be situated.

History: En. Sec. 249, Civ. C. 1895; re-en. Sec. 3729, Rev. C. 1907; re-en. Sec. 5805, R.C.M. 1921; Cal. Civ. C. Sec. 179; re-en. Sec. 5805, R.C.M. 1935; R.C.M. 1947, 36-124.

Cross-References
Acknowledgment by married person, 1-5-206, 1-5-207.
Separation agreement, 40-4-201.
Recording transfers and other transactions relating to real property, Title 70, ch. 21.

40-2-314. Effect of recording. The recording or nonrecording of such contract has a like effect as the recording or nonrecording of a grant of real property.

History: En. Sec. 250, Civ. C. 1895; re-en. Sec. 3730, Rev. C. 1907; re-en. Sec. 5806, R.C.M. 1921; Cal. Civ. C. Sec. 180; re-en. Sec. 5806, R.C.M. 1935; R.C.M. 1947, 36-125.

Cross-References
Effect of recording, Title 70, ch. 21, part 3.

40-2-315. Marriage settlement by minors. A minor capable of contracting marriage may make a valid marriage settlement, as herein provided.

History: En. Sec. 251, Civ. C. 1895; re-en. Sec. 3731, Rev. C. 1907; re-en. Sec. 5807, R.C.M. 1921; Cal. Civ. C. Sec. 181; re-en. Sec. 5807, R.C.M. 1935; R.C.M. 1947, 36-126.

Cross-References

Minor cannot disaffirm certain obligations, 41-1-306.

Part 4

Battered Spouses Grant Programs

Part Cross-References

Department of Social and Rehabilitation Services, Title 2, ch. 15, part 22.

Criminal offense of domestic abuse, 45-5-206.

Notice of rights to victim upon arrest in domestic violence situation, 46-6-422.

40-2-401. Battered spouses and domestic violence grant program created. There is a grant program established within the department of social and rehabilitation services for the allocation of grant money to local battered spouses and domestic violence programs.

History: En. Sec. 1, Ch. 677, L. 1979.

40-2-402. Duties of department. The department of social and rehabilitation services:

(1) shall adopt rules necessary to carry out the purposes of this part;

(2) may spend no more than 5% of the appropriated funds for administrative costs of the program;

(3) shall accept federal funds that may be available for use in carrying out the provisions of this part;

(4) may use state funds as a match for federal funds if required; and

(5) may conduct research and compile statistics relating to battered spouses and domestic violence.

History: En. Sec. 5, Ch. 677, L. 1979.

40-2-403. Authorized grantees — criteria for grants. (1) The department of social and rehabilitation services must award battered spouses and domestic violence grants only to local domestic abuse programs that are locally controlled. Grants may be awarded to governmental or nongovernmental agencies or persons.

(2) Battered spouses and domestic violence grants are to be awarded on the following basis:

(a) demonstrated need;

(b) project merit;

(c) administrative design; and

(d) efficiency of administration.

History: En. Sec. 3, Ch. 677, L. 1979.

40-2-404. Authorized services of programs. (1) Local battered spouses and domestic violence programs may provide services that include but are not limited to the following:

(a) counseling for victims or their spouses;

(b) shelters or safe homes for victims;

(c) advocacy programs that assist victims in obtaining services and information; and

(d) educational programs relating to battered spouses and domestic violence designed for both the community at large and specialized groups such as hospital personnel and law enforcement officials.

(2) The services authorized in subsection (1) may be provided on a regional basis by a local battered spouses and domestic violence program if so authorized by the department of social and rehabilitation services according to regional boundaries established by the department.

History: En. Sec. 4, Ch. 677, L. 1979; amd. Sec. 3, Ch. 493, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (2).

40-2-405. Funding. (1) Revenue from the marriage license fee and the fee collected for filing a declaration of marriage without solemnization is the primary source of funding for the battered spouses and domestic violence program. The disposition of the marriage license fee is as established in 25-1-201.

(2) Twenty percent of the operational costs of a battered spouses and domestic violence program must come from the local community served by the program. The local contribution may include in-kind contributions.

History: En. Sec. 2, Ch. 677, L. 1979; amd. Sec. 4, Ch. 493, L. 1981; amd. Sec. 3, Ch. 12, L. 1983.

Compiler's Comments

1983 Amendment: In (1), inserted "and the fee collected for filing a declaration of marriage without solemnization".

1981 Amendment: Changed language relating to disposition of the marriage license fee from $16/$9 county/general fund disposition to disposition based on 25-1-201.

Cross-References

Marriage license issuance — fee, 40-1-202.

Declaration of marriage without solemnization — fee, 40-1-311.

CHAPTER 3

RECONCILIATION

Part 1 — Montana Conciliation Law

Section

40-3-101. Citation.
40-3-102. Purposes.
40-3-103. Use of shall and may.
40-3-104. Application.
40-3-105 through 40-3-110 reserved.
40-3-111. Conciliation court — jurisdiction.
40-3-112. Selection of judges.
40-3-113. Transfer of cases.
40-3-114. Budget.
40-3-115. Probation officers' duties.
40-3-116. Privacy of hearings.
40-3-117 through 40-3-120 reserved.
40-3-121. Filing of petition.
40-3-122. Petition form and contents.
40-3-123. No fees.
40-3-124. Manner of conciliation.
40-3-125. Hearings.
40-3-126. Orders — reconciliation agreement.
40-3-127. Dissolution, declaration of invalidity, or separate maintenance proceeding — effect.

Part 1

Montana Conciliation Law

40-3-101. Citation. This chapter may be cited as the "Montana Conciliation Law".

History: En. Sec. 1, Ch. 238, L. 1963; R.C.M. 1947, 36-201.

40-3-102. Purposes. The purposes of this chapter are to protect the rights of children and to promote the public welfare by preserving, promoting, and protecting family life and the institution of matrimony and to provide means for the reconciliation of spouses and the amicable settlement of domestic and family controversies.

History: En. Sec. 2, Ch. 238, L. 1963; R.C.M. 1947, 36-202(1).

Cross-References

Rights and obligations of minors, Title 41, ch. 1.

40-3-103. Use of shall and may. As used in this chapter "shall" is mandatory and "may" is permissive.

History: En. Sec. 2, Ch. 238, L. 1963; R.C.M. 1947, 36-202(2).

40-3-104. Application. The provisions of this chapter shall be applicable only in counties in which the district court determines that the social conditions in the county and the number of domestic relations cases in the courts render the procedures herein provided necessary to the full and proper consideration of such cases and the effectuation of the purposes of this chapter. Such determination shall be made annually in the month of January or July by the judge of the district court in counties having only one such judge and by a majority of the judges of the district court in counties having more than one such judge.

History: En. Sec. 2, Ch. 238, L. 1963; R.C.M. 1947, 36-202(3).

Cross-References

District Court — powers respecting conduct of business, 3-1-111.

District Court — means to carry jurisdiction into effect, 3-1-113.

40-3-105 through 40-3-110 reserved.

40-3-111. Conciliation court — jurisdiction. (1) Each district court shall exercise the jurisdiction conferred by this chapter and while sitting in the exercise of such jurisdiction shall be known and referred to as the "conciliation court".

(2) Whenever any controversy exists between the spouses which may, unless a reconciliation is achieved, result in the dissolution or annulment of the marriage or in the disruption of the household and there is any minor child of the spouses or of either of them whose welfare might be affected thereby, the conciliation court shall have jurisdiction over the controversy and over the parties thereto and all persons having any relation to the controversy as further provided in this chapter.

(3) Whenever application is made to the conciliation court for conciliation proceedings in respect to a controversy between spouses or a contested action

for dissolution, annulment, or separate maintenance but there is no minor child whose welfare may be affected by the results of the controversy and it appears to the court that reconciliation of the spouses or amicable adjustment of the controversy can probably be achieved and that the work of the court in cases involving children will not be seriously impeded by acceptance of the case, the court may accept and dispose of the case in the same manner as similar cases involving the welfare of children are disposed of. In the event of such application and acceptance, the court shall have the same jurisdiction over the controversy and the parties thereto or having any relation thereto that it has under this chapter in similar cases involving the welfare of children.

(4) The jurisdiction of the conciliation courts and the powers thereof shall be as provided in the constitution of Montana, Title 3, chapter 5, parts 1 through 4, and acts amendatory and relating thereto, including the right of disqualification of any judge of the conciliation court.

History: (1), (4)En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; Sec. 36-203, R.C.M. 1947; (2), (3)En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; Sec. 36-204, R.C.M. 1947; R.C.M. 1947, 36-203(1), (8), 36-204(1), (13).

Cross-References

District Court — jurisdiction, Art. VII, sec. 4, Mont. Const.

Means to carry jurisdiction into effect, 3-1-113.

Child abuse, neglect, and dependency — jurisdiction and venue, 41-3-103.

Youth Court — jurisdiction, Title 41, ch. 5, part 2.

40-3-112. Selection of judges. In counties having more than one judge of the district court, the judges of such court shall annually, in the month of January or July, designate at least one judge to hear all cases under this chapter. The judge or judges so designated shall hold as many sessions of the conciliation court in each week as are necessary for the prompt disposition of the business before the court.

History: En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(2).

40-3-113. Transfer of cases. Another district judge may be called in by the judge of the conciliation court to act as judge of the conciliation court during any period when the judge of the conciliation court is on vacation, absent, or for any reason unable to perform his duties. Any judge so appointed shall have all of the powers and authority of a judge of the conciliation court in cases under this chapter.

History: En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(3).

Cross-References

Transfer when judge unable to hear motion or return of order, 25-4-102.

40-3-114. Budget. The provisions of the county budget system, Title 7, chapter 6, part 23, shall, except as provided by 40-3-125(3), be applicable to expenditures for the court of conciliation.

History: En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(4); amd. Sec. 3, Ch. 405, L. 1979.

40-3-115. Probation officers' duties. The probation officer in every county shall give such assistance to the conciliation court as the court may request to carry out the purposes of this chapter, and to that end the probation officer shall, upon request and with the consent of both parties, make investigations and reports as requested and, in cases pursuant to this chapter, shall exercise all the powers and perform all the duties granted or imposed by the laws of this state relating to probation or to probation officers.

History: En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(6).

Cross-References

Probation officers — appointment and supervision, 41-5-201, 41-5-701.

Powers and duties of probation officers, 41-5-401, 41-5-703.

Qualifications of probation officers, 41-5-702.

40-3-116. Privacy of hearings. (1) All district court hearings or conferences in proceedings under this chapter shall be held in private, and the court shall exclude all persons except the officers of the court, the parties, their counsel, and witnesses. Conferences may be held with each party and his counsel separately. In the discretion of the judge or counselor conducting the conference or hearing, all counsel may be excluded. All communications, verbal or written, from parties to the judge or counselor in a proceeding under this chapter shall be deemed made to such officer in official confidence.

(2) The files of the conciliation court shall be closed. The petition, supporting affidavit, reconciliation agreement, and any court order made in the matter may be opened to inspection by any party or his counsel upon the written authority of the judge of the conciliation court.

History: En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(7).

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Records of officers open to public inspection, 2-6-104.

Sittings of court — when private, 3-1-313.

40-3-117 through 40-3-120 reserved.

40-3-121. Filing of petition. Prior to the filing of any action for dissolution, annulment, or separate maintenance, either spouse or both spouses may file in the conciliation court a petition invoking the jurisdiction of the court for the purpose of preserving the marriage by effecting a reconciliation between the parties or for amicable settlement of the controversy between the spouses so as to avoid further litigation over the issue involved.

History: En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(2).

40-3-122. Petition form and contents. (1) The petition shall be captioned substantially as follows:

District Court of the State of Montana
For the County of ....

Upon the petition of .... Petitioner And concerning ....and .... Respondents.	Petition for Conciliation (Under the Conciliation Court Law)

To the Conciliation Court:

(2) The petition shall:

(a) allege that a controversy exists between the spouses and request the aid of the court to effect a reconciliation or an amicable settlement of the controversy;

(b) state the name and age of each minor child whose welfare may be affected by the controversy;

(c) state the name and address of the petitioner or the names and addresses of the petitioners;

(d) if the petition is presented by one spouse only, name the other spouse as a respondent and state the address of that spouse;

(e) also name as a respondent any other person who has any relation to the controversy and state the address of the person, if known to the petitioner;

(f) state such other information as the court may by rule require.

(3) The clerk of the court shall provide, at the expense of the county, blank forms for petitions for filing pursuant to this chapter. The probation officers of the county and the attaches and employees of the conciliation court shall assist any person in the preparation and presentation of any such petition when any person requests such assistance. All public officers in each county shall refer to the conciliation court all petitions and complaints made to them in respect to controversies within the jurisdiction of the conciliation court.

History: En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(3) thru (5).

40-3-123. No fees. No fee may be charged by any officer for filing the petition nor may any fee be charged by any officer for the performance of any duty pursuant to this chapter.

History: En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(6).

Cross-References

Fees of Clerk of District Court, 25-1-201.

40-3-124. Manner of conciliation. (1) The judge of the conciliation court may hear all matters invoked under this chapter, or he may refer such matters to a pastor or director of any religious denomination to which the parties may belong, psychiatrist, physician, attorney, social worker, or other person who is competent and qualified by training and experience in personal counseling. Such person shall be referred to herein as the conciliation counselor.

(2) The conciliation counselor shall:

(a) hold conciliation conferences with parties to, and hearings in, proceedings under this chapter and make recommendations concerning such proceedings to the judge of the conciliation court;

(b) cause such reports to be made, such statistics to be compiled, and such records to be kept as the judge of the conciliation court may direct.

History: En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(5).

40-3-125. Hearings. (1) The court shall fix a reasonable time and place for hearing on the petition and shall cause such notice of the filing of the petition and the time and place of the hearing as it considers necessary to be given to the respondents. The court may, when it considers it necessary, issue a citation to any respondent requiring him to appear at the time and place stated in the citation and may require the attendance of witnesses as in other civil cases.

(2) For the purpose of conducting hearings pursuant to this chapter, the conciliation court may be convened at any time and place within the district and the hearing may be had in chambers or otherwise, except that the time and place for hearing may not be different from the time and place provided by law for the trial of civil actions if any party, prior to the hearing, objects to any different time or place.

(3) The hearing shall be conducted informally as a conference or series of conferences to effect a reconciliation of the spouses or an amicable adjustment or settlement of the issues of the controversy. To facilitate and promote the purposes of this chapter, the court may, with the consent of both of the parties to the proceeding, recommend or invoke the aid of physicians, psychiatrists, other specialists or scientific experts, or the pastor or director of any religious denomination to which the parties may belong. Such aid, however, shall not be at the expense of the court or of the county, unless the county commissioners of the county specifically provide and authorize such aid.

History: En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(7) thru (9).

Cross-References

General rules regarding procedure, Title 3, ch. 1, part 3.

Sittings of court — when private, 3-1-313.

Terms and location of District Court, 3-5-401.

40-3-126. Orders — reconciliation agreement. (1) At or after hearing, the court may make such orders in respect to the conduct of the spouses and the subject matter of the controversy as the court considers necessary to preserve the marriage or to implement the reconciliation of the spouses, but in no event may such orders be effective for more than 30 days from the hearing of the petition, unless the parties mutually consent to a continuation of such time.

(2) Any reconciliation agreement between the parties may be reduced to writing and, with the consent of the parties, a court order may be made requiring the parties to comply fully therewith.

History: En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(10).

40-3-127. Dissolution, declaration of invalidity, or separate maintenance proceeding — effect. (1) During a period beginning upon the filing of the petition for conciliation and continuing until 30 days after the hearing of the petition for conciliation, neither spouse shall file any action for dissolution, declaration of invalidity, or separate maintenance.

(2) If after the expiration of such period the controversy between the spouses has not been terminated, either spouse may institute proceedings for dissolution, declaration of invalidity, or separate maintenance. The pendency of a dissolution, declaration of invalidity, or separate maintenance action may not operate as a bar to the instituting of proceedings for conciliation under this chapter.

(3) Whenever any action for dissolution, declaration of invalidity, or separate maintenance is filed in the district court and it appears to the court at

any time during the pendency of the action that there is any minor child of the spouses or of either of them whose welfare may be adversely affected by the dissolution or declaration of invalidity of the marriage or the disruption of the household and that there appears to be some reasonable possibility of a reconciliation being effected, the case may be transferred to the conciliation court for proceedings for reconciliation of the spouses or amicable settlement of issues in controversy, in accordance with the provisions of this chapter.

History: En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(11), (12); amd. Sec. 169, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "declaration of invalidity" for "annulment" or "annulment of marriage" in five places.

Cross-References

Declaration of invalidity, 40-1-402.

Dissolution of marriage — legal separation, 40-4-104.

Maintenance, 40-4-203.

CHAPTER 4

TERMINATION OF MARRIAGE, CHILD CUSTODY, SUPPORT

Part 1 — Separation—Dissolution of Marriage

Section
40-4-101. Purposes.
40-4-102. Uniformity of application and construction.
40-4-103. Application of the Montana Rules of Civil Procedure.
40-4-104. Dissolution of marriage — legal separation.
40-4-105. Procedure — commencement — pleadings — abolition of existing defenses.
40-4-106. Renumbered 40-4-121 by Code Commissioner, 1985.
40-4-107. Irretrievable breakdown.
40-4-108. Decree.
40-4-109. Independence of provisions of decree or temporary order.
40-4-110. Costs — attorney's fees.
40-4-111 through 40-4-120 reserved.
40-4-121. Temporary order or temporary injunction.
40-4-122. Forms — distribution — filing.
40-4-123. Jurisdiction and venue.
40-4-124. Review or removal — district court.
40-4-125. Registration of orders.

Part 2 — Support, Custody, Visitation, and Related Provisions

40-4-201. Separation agreement.
40-4-202. Division of property.
40-4-203. Maintenance.
40-4-204. Child support — orders to address health insurance — warning of withholding procedures.
40-4-205. Representation of child.
40-4-206. Payment of maintenance or support to court — handling fee of clerk.
40-4-207. Assignments.
40-4-208. Modification and termination of provisions for maintenance, support, and property disposition.
40-4-209. Security or guaranty to secure support.
40-4-210 reserved.
40-4-211. Child custody jurisdiction — commencement of proceedings.
40-4-212. Best interest of child.
40-4-213. Temporary orders.

40-4-214. Interviews.
40-4-215. Investigations and reports.
40-4-216. Hearings.
40-4-217. Visitation.
40-4-218. Judicial supervision.
40-4-219. Modification.
40-4-220. Affidavit practice.
40-4-221. Determination of custody upon death of custodial parent.
40-4-222. Declaration of legislative intent — joint custody.
40-4-223. Award of joint or separate custody.
40-4-224. Joint custody — modification — consultation with professionals.
40-4-225. Access to records by noncustodial parent.

Part 1

Separation — Dissolution of Marriage

Part Cross-References

Court proceedings may be private in divorce action, 3-1-313.

When divorce terminates right of interment, 35-21-420.

Displaced Homemaker Program, Title 39, ch. 7, part 3.

40-4-101. Purposes. This chapter shall be liberally construed and applied to promote its underlying purposes, which are to:

(1) strengthen and preserve the integrity of marriage and safeguard family relationships;

(2) promote the amicable settlement of disputes that have arisen between parties to a marriage;

(3) mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage;

(4) make reasonable provision for spouse and minor children during and after litigation; and

(5) make the law of legal dissolution of marriage effective for dealing with the realities of matrimonial experience by making irretrievable breakdown of the marriage relationship the sole basis for its dissolution.

History: En. 48-302 by Sec. 2, Ch. 536, L. 1975; R.C.M. 1947, 48-302(part).

Cross-References

Montana Conciliation Law, Title 40, ch. 3, part 1.

40-4-102. Uniformity of application and construction. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it.

History: En. 48-303 by Sec. 3, Ch. 536, L. 1975; R.C.M. 1947, 48-303.

40-4-103. Application of the Montana Rules of Civil Procedure. (1) Except for proceedings coming under the Uniform Child Custody Jurisdiction Act, the Montana Rules of Civil Procedure apply to all proceedings under this chapter, except as otherwise provided in this chapter.

(2) A proceeding for dissolution of marriage or legal separation shall be entitled, "In re the Marriage of .... and ....". A custody or support proceeding shall be entitled, "In re the (custody) (support) of ....".

(3) The initial pleading in all proceedings under this chapter shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in other matters under this chapter, shall be denominated as provided in the Montana Rules of Civil Procedure.

(4) In this chapter, "decree" includes "judgment".

(5) A decree of dissolution or of legal separation, if made, shall not be awarded to one of the parties but shall provide that it affects the status previously existing between the parties in the manner decreed.

History: En. 48-315 by Sec. 15, Ch. 536, L. 1975; amd. Sec. 26, Ch. 537, L. 1977; R.C.M. 1947, 48-315(part).

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

Application of the Montana Rules of Civil Procedure, 40-1-105.

Uniform Child Custody Jurisdiction Act, Title 40, ch. 7, part 1.

40-4-104. Dissolution of marriage — legal separation. (1) The district court shall enter a decree of dissolution of marriage if:

(a) the court finds that one of the parties, at the time the action was commenced, was domiciled in this state or was stationed in this state while a member of the armed services and that the domicile or military presence has been maintained for 90 days next preceding the making of the findings;

(b) the court finds that the marriage is irretrievably broken, which findings shall be supported by evidence:

(i) that the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of this proceeding; or

(ii) that there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage;

(c) the court finds that the conciliation provisions of the Montana Conciliation Law and of 40-4-107 either do not apply or have been met; and

(d) to the extent it has jurisdiction to do so, the court has considered, approved, or made provision for child custody, the support of any child entitled to support, the maintenance of either spouse, and the disposition of property.

(2) If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the court shall grant the decree in that form unless the other party objects.

History: En. 48-316 by Sec. 16, Ch. 536, L. 1975; R.C.M. 1947, 48-316; amd. Sec. 1, Ch. 392, L. 1985.

Compiler's Comments

1985 Amendment: In (1)(d) near end, after "property", deleted "or provided for a separate, later hearing to complete these matters".

Cross-References

Residence — rules for determining, 1-1-215.

Conciliation proceedings — effect on other proceedings, 40-3-127.

Support, custody, visitation, and related provisions, Title 40, ch. 4, part 2.

40-4-105. Procedure — commencement — pleadings — abolition of existing defenses. (1) The verified petition in a proceeding for dissolution of marriage or legal separation shall allege that the marriage is irretrievably broken and shall set forth:

(a) the age, occupation, and residence of each party and his length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably broken in that either:

(i) the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of this proceeding; or

(ii) there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage, and there is no reasonable prospect of reconciliation;

(d) the names, ages, and addresses of all living children of the marriage and whether the wife is pregnant;

(e) any arrangements as to support, custody, and visitation of the children and maintenance of a spouse; and

(f) the relief sought.

(2) Either or both parties to the marriage may initiate the proceeding.

(3) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Montana Rules of Civil Procedure and may within 20 days after the date of service file a verified response. No decree may be entered until 20 days after the date of service.

(4) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

(5) The court may join additional parties proper for the exercise of its authority to implement this chapter.

History: En. 48-317 by Sec. 17, Ch. 536, L. 1975; amd. Sec. 10, Ch. 33, L. 1977; R.C.M. 1947, 48-317.

Cross-References

Residence — rules for determining, 1-1-215.

Court proceeding may be private in divorce action, 3-1-313.

Montana Rules of Civil Procedure, Title 25, ch. 20.

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20.)

Application of Montana Rules of Civil Procedure, 40-1-105.

Alteration of legal relation by contract — separation agreement, 40-2-303.

Montana Conciliation Law, Title 40, ch. 3, part 1.

Recordation of marriage, 50-15-301.

40-4-106. Renumbered 40-4-121 by Code Commissioner, 1985.

40-4-107. Irretrievable breakdown. (1) If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken or one of the parties has so stated and the other has not denied it, the court, after hearing, shall make a finding whether the marriage is irretrievably broken.

(2) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to filing the petition and the prospect of reconciliation, and shall:

(a) make a finding whether the marriage is irretrievably broken; or

(b) continue the matter for further hearing not fewer than 30 or more than 60 days later or as soon thereafter as the matter may be reached on the court's calendar and may suggest to the parties that they seek counseling. The court at the request of either party shall, or on its own motion may, order a conciliation conference. At the adjourned hearing the court shall make a finding whether the marriage is irretrievably broken.

(3) A finding of irretrievable breakdown is a determination that there is no reasonable prospect of reconciliation.

(4) Nothing in this section shall be interpreted to affect the provisions of chapter 3 of this title, known as the Montana Conciliation Law.

History: En. 48-319 by Sec. 19, Ch. 536, L. 1975; R.C.M. 1947, 48-319.

Cross-References

Cause of action for alienation of affections abolished, 27-1-601.

Conciliation court — jurisdiction, 40-3-111.

Privacy of hearings, 40-3-116.

Manner of conciliation, 40-3-124.

40-4-108. Decree. (1) A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree which dissolves the marriage beyond the time for appealing from that provision, and either of the parties may remarry pending appeal.

(2) No earlier than 6 months after entry of a decree of legal separation, the court on motion of either party shall convert the decree to a decree of dissolution of marriage.

(3) The clerk of court shall give notice of the entry of a decree of dissolution or legal separation:

(a) if the marriage is registered in this state, to the clerk of the district court of the county where the marriage is registered who shall enter the fact of dissolution or separation in the book in which the marriage license and certificate are recorded; or

(b) if the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction, with the request that he enter the fact of dissolution in the appropriate record.

(4) Upon request by a wife whose marriage is dissolved or declared invalid, the court shall order her maiden name or a former name restored.

History: En. 48-328 by Sec. 28, Ch. 536, L. 1975; amd. Sec. 1, Ch. 174, L. 1977; R.C.M. 1947, 48-328.

Cross-References

Clerk of Court — general duties, 3-5-501.

Montana Rules of Appellate Civil Procedure, Title 25, ch. 21.

Change of name, Title 27, ch. 31.

When divorce terminates right of interment, 35-21-420.

Decree of dissolution — vital statistics, 50-15-302.

Revocation of provision for spouse in will by divorce or annulment, 72-2-322.

40-4-109. Independence of provisions of decree or temporary order. If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to permit visitation is not suspended but he may move the court to grant an appropriate order.

History: En. 48-329 by Sec. 29, Ch. 536, L. 1975; R.C.M. 1947, 48-329.

Cross-References

Maintenance, 40-4-203.

Child support, 40-4-204.

Visitation, 40-4-217.

40-4-110. Costs — attorney's fees. The court from time to time, after considering the financial resources of both parties, may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under chapters 1 and 4 of this title and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

History: En. 48-327 by Sec. 27, Ch. 536, L. 1975; R.C.M. 1947, 48-327.

Cross-References

Allowable costs, Title 25, ch. 10, part 2.
Attorneys' fees, Title 25, ch. 10, part 3.
Representation of child, 40-4-205.
Modification, 40-4-219.

40-4-111 through 40-4-120 reserved.

40-4-121. Temporary order or temporary injunction. (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the following relief:

(a) restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life and, if so restrained, requiring him to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) enjoining a party from molesting or disturbing the peace of the other party or of any child;

(c) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(d) enjoining a party from removing a child from the jurisdiction of the court; and

(e) providing other injunctive relief proper in the circumstances.

(3) A person may seek the relief provided for in subsection (2) of this section without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition:

(a) alleging physical abuse, harm, or bodily injury against the petitioner by a family or household member; and

(b) requesting relief under Title 27, chapter 19, part 3. Any preliminary injunction entered under this subsection must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208. Persons who may request relief under this subsection include spouses, former spouses, and persons cohabiting or who have cohabited with the other party within 1 year immediately preceding the filing of the petition.

(4) The court may issue a temporary restraining order for a period not to exceed 20 days without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(5) A response may be filed within 20 days after service of notice of motion or at the time specified in the temporary restraining order.

(6) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.

(7) A temporary order or temporary injunction:

(a) does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;

(b) may be revoked or modified before final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208;

(c) terminates upon order of the court or when a final decree is entered or when a petition for dissolution or legal separation is voluntarily dismissed; and

(d) when issued under this section must conspicuously bear the following: "Violation of this order is a criminal offense under 45-5-626."

(8) When the petitioner has fled the parties' residence, notice of petitioner's new residence must be withheld except by order of the court for good cause shown.

History: En. 48-318 by Sec. 18, Ch. 536, L. 1975; R.C.M. 1947, 48-318; amd. Sec. 1, Ch. 180, L. 1981; amd. Sec. 4, Ch. 526, L. 1985; Sec. 40-4-106, MCA 1983; redes. 40-4-121 by Code Commissioner, 1985.

Compiler's Comments

1985 Amendment: In (3)(a), inserted "harm, or bodily injury" and substituted "family or household member" for "spouse"; in (3)(b), after "requesting", deleted "injunctive", and inserted last sentence; in (4) inserted "for a period not to exceed 20 days"; in (7)(c), after "terminates", inserted "upon order of the court or" and made minor changes in phraseology; and inserted (7)(d) and (8).

1981 Amendment: Inserted subsection (3) relating to preliminary injunction for physical abuse.

Cross-References

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20).

How preventive relief is given, 27-1-403.

When preliminary injunction may be granted, 27-19-201.

Procedure for obtaining preliminary injunction, Title 27, ch. 19, part 3.

Battered spouses grant program, Title 40, ch. 2, part 4.

Temporary custody orders, 40-4-213.

Criminal offense of domestic abuse, 45-5-206.

Notice of rights to victim upon arrest in domestic violence situation, 46-6-422.

40-4-122. Forms — distribution — filing. The attorney general shall prepare uniform sample instructions and petition and order forms necessary for allowing an applicant to obtain a temporary restraining order under 40-4-121 and uniform sample affidavits and orders of inability to pay filing fees or other costs. The attorney general shall distribute samples of the restraining order and the inability-to-pay-filing-fees order forms to the clerk of the district court in each county and to justice and municipal courts. The clerk of the district court, justices of the peace, and municipal courts shall make forms available to the public at no charge.

History: En. Sec. 5, Ch. 526, L. 1985.

40-4-123. Jurisdiction and venue. (1) District courts, municipal courts, and justices' courts have concurrent jurisdiction to hear and issue orders under 40-4-121(3).

(2) The municipal judge or justice of the peace shall on motion suspend all further proceedings in the action and certify the pleading and any orders to the clerk of the district court of the county where the action was begun if an action for declaration of invalidity of a marriage, legal separation, or dissolution of marriage, or child custody is pending between the parties. From the time of the certification of such pleadings and any orders to the clerk, the district court has the same jurisdiction over the action as if it had been commenced therein.

(3) An action brought under 40-4-121(3) may be tried in the county in which either party resides or in which the physical abuse was committed.

(4) The right to petition for relief may not be denied because the plaintiff has vacated the residence or household to avoid abuse.

History: En. Sec. 6, Ch. 526, L. 1985.

Cross-References

Violation of protective order a misdemeanor, 45-5-626.

40-4-124. Review or removal — district court. (1) An order issued by a municipal court or justice court pursuant to 40-4-121(3) is immediately reviewable by the judge of the district court at chambers upon the filing of a notice of appeal. The district judge may affirm, dissolve, or modify an order of a municipal court or justice court made pursuant to 40-4-121(3).

(2) Any case in which an order has been issued by a municipal court or justice court pursuant to 40-4-121(3) may be removed to district court upon filing of a notice of removal.

History: En. Sec. 7, Ch. 526, L. 1985.

40-4-125. Registration of orders. (1) The clerk of court, justice of the peace, or municipal court judge shall, within 24 hours of receiving proof of service of an order under 40-4-121, mail a copy of the order or any extension, modification, or termination thereof along with a copy of the proof of service to the appropriate law enforcement agencies designated in the order.

(2) Law enforcement agencies shall establish procedures, using an existing system for warrant verification, to ensure that peace officers at the scene of an alleged violation of a protective order are informed of the existence and terms of such order.

History: En. Sec. 8, Ch. 526, L. 1985.

Cross-References

Violation of protective order a misdemeanor, 45-5-626.

Part 2

Support, Custody, Visitation, and Related Provisions

40-4-201. Separation agreement. (1) To promote amicable settlement of disputes between parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them, and support, custody, and visitation of their children.

(2) In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for the support, custody, and visitation of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the separation agreement is unconscionable.

(3) If the court finds the separation agreement unconscionable, it may request the parties to submit a revised separation agreement or may make orders for the disposition of property, maintenance, and support.

(4) If the court finds that the separation agreement is not unconscionable as to disposition of property or maintenance and not unsatisfactory as to support:

(a) unless the separation agreement provides to the contrary, its terms shall be set forth in the decree of dissolution or legal separation and the parties shall be ordered to perform them; or

(b) if the separation agreement provides that its terms shall not be set forth in the decree, the decree shall identify the separation agreement and state that the court has found the terms not unconscionable.

(5) Terms of the agreement set forth in the decree are enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.

(6) Except for terms concerning the support, custody, or visitation of children, the decree may expressly preclude or limit modification of terms set forth in the decree if the separation agreement so provides. Otherwise, terms of a separation agreement set forth in the decree are automatically modified by modification of the decree.

History: En. 48-320 by Sec. 20, Ch. 536, L. 1975; R.C.M. 1947, 48-320.

Cross-References

Imprisonment for debt, Art. II, sec. 27, Mont. Const.

Contempts, Title 3, ch. 1, part 5.

What acts or omissions are contempts, 3-1-501.

Procedure — contempt not in presence of the court, 3-1-512.

Imprisonment to compel performance, 3-1-520.

Judgments, Title 25, ch. 9.

Execution of judgment, Title 25, ch. 13.

Breach of contract, 27-1-311.

Specific and preventive relief, Title 27, ch. 1, part 4.

Unconscionable contract or clause, 30-2-302.

Alteration of legal relation by contract — separation agreement, 40-2-303.

Consideration for separation, 40-2-304.

40-4-202. Division of property. (1) In a proceeding for dissolution of a marriage, legal separation, or division of property following a decree of dissolution of marriage or legal separation by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to divide the property, the court, without regard to marital misconduct, shall, and in a proceeding for legal separation may, finally equitably apportion between the parties the property and assets belonging to either or both, however and whenever acquired and whether the title thereto is in the name of the husband or wife or both. In making apportionment, the court shall consider the duration of the marriage and prior marriage of either party; antenuptial agreement of the parties; the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties; custodial provisions; whether the apportionment is in lieu of or in addition to maintenance; and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution or dissipation of value of the respective estates and the contribution of a spouse as a homemaker or to the family unit. In dividing property acquired prior to the marriage; property acquired by gift, bequest, devise, or descent; property acquired in exchange for property acquired before the marriage or in exchange for property acquired by gift, bequest, devise, or descent; the increased value of property acquired prior to marriage; and property acquired by a spouse after a decree of legal separation, the court shall consider those contributions of the other spouse to the marriage, including:

(a) the nonmonetary contribution of a homemaker;

(b) the extent to which such contributions have facilitated the maintenance of this property; and

(c) whether or not the property division serves as an alternative to maintenance arrangements.

(2) In a proceeding, the court may protect and promote the best interests of the children by setting aside a portion of the jointly and separately held estates of the parties in a separate fund or trust for the support, maintenance, education, and general welfare of any minor, dependent, or incompetent children of the parties.

(3) Each spouse is considered to have a common ownership in marital property that vests immediately preceding the entry of the decree of dissolution or declaration of invalidity. The extent of the vested interest must be determined and made final by the court pursuant to this section.

(4) The division and apportionment of marital property caused by or incident to a decree of dissolution, a decree of legal separation, or a declaration of invalidity is not a sale, exchange, transfer, or disposition of or dealing in property but is a division of the common ownership of the parties for purposes of:

(a) the property laws of this state;

(b) the income tax laws of this state; and

(c) the federal income tax laws.

History: En. 48-321 by Sec. 21, Ch. 536, L. 1975; R.C.M. 1947, 48-321; amd. Sec. 1, Ch. 613, L. 1983.

Compiler's Comments

1983 Amendment: Throughout (1), substituted references to division of property for references to disposition of property; and inserted (3) and (4).

Cross-References

Individual income tax, Title 15, ch. 30.

Duties of husband and wife as to support, 40-2-102.

Individual property, Title 40, ch. 2, part 2.

Alteration of legal relation by contract — separation agreement, 40-2-303.

Property rights of husband and wife — how governed, 40-2-311.

Marriage settlement contracts — how executed, 40-2-312.

Dissolution of marriage — legal separation, 40-4-104.

Best interest of children, 40-4-212.

Trusts in general, Title 72, ch. 20.

40-4-203. Maintenance. (1) In a proceeding for dissolution of marriage or legal separation or a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:

(a) lacks sufficient property to provide for his reasonable needs; and

(b) is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

(2) The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to marital misconduct, and after considering all relevant facts including:

(a) the financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

(b) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

(c) the standard of living established during the marriage;

(d) the duration of the marriage;

(e) the age and the physical and emotional condition of the spouse seeking maintenance; and

(f) the ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.

History: **En. 48-322 by Sec. 22, Ch. 536, L. 1975; R.C.M. 1947, 48-322.**

Cross-References

Earnings of judgment debtor — exemption from execution for maintenance, 25-13-614.

Individual property, Title 40, ch. 2, part 2.

Necessity determined by standard of living, 40-2-210.

Dissolution of marriage — legal separation, 40-4-104.

Temporary order or temporary injunction, 40-4-121.

40-4-204. Child support — orders to address health insurance — warning of withholding procedures. (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court may order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his support, without regard to marital misconduct, after considering all relevant factors including:

(a) the financial resources of the child;

(b) the financial resources of the custodial parent;

(c) the standard of living the child would have enjoyed had the marriage not been dissolved;

(d) the physical and emotional condition of the child and his educational needs;

(e) the financial resources and needs of the noncustodial parent; and

(f) for the purposes of determining a minimum amount for support, the amount received by children under the AFDC program, as defined in 53-2-702.

(2) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state the reasons for not ordering child support.

(3) Each district court judgment, decree, or order establishing a final child support obligation under this title and each modification of a final order for child support must include a provision addressing health insurance coverage in the following cases:

(a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment, decree, or order may contain a provision requiring that coverage for the child or children be continued or obtained.

(b) In the event that health insurance required in a child support judgment, decree, or order becomes unavailable to the party who is to provide it through loss or change of employment or otherwise, that party must, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

(c) All temporary child support orders must contain a provision requiring the party who has health insurance in effect for the child or children of the parties to continue the insurance coverage pending final disposition of the case.

(d) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.

(e) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.

(4) Each district court judgment or order establishing a child support obligation under this title, whether temporary or final, and each modification of an existing order for child support entered after October 1, 1985, must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning statement in a judgment or order does not preclude the use of withholding procedures.

History: En. 48-323 by Sec. 23, Ch. 536, L. 1975; R.C.M. 1947, 48-323; amd. Sec. 1, Ch. 590, L. 1983; amd. Sec. 1, Ch. 727, L. 1985; (3)En. Sec. 1, Ch. 434, L. 1985; (4)En. Sec. 1, Ch. 651, L. 1985.

Compiler's Comments

1985 Amendment — Subsection Enactments: Chapter 727, L. 1985, inserted (2).

Section 1, Ch. 434, L. 1985, was enacted as a separate section but is codified in this section as subsection (3) for convenience.

Section 1, Ch. 651, L. 1985, was enacted as a separate section but is codified in this section as subsection (4) for convenience.

1983 Amendment: Inserted (6) (now (1)(f)).

Cross-References

Earnings of judgment debtor — exemption from execution for support, 25-13-614.

Necessity determined by standard of living, 40-2-210.

Dissolution of marriage — legal separation, 40-4-104.

Temporary order or temporary injunction, 40-4-121.

Enforcement of support, Title 40, ch. 5.

Judgment or order — parent and child relationship, 40-6-116.

Allowance to parent, 40-6-212.

Remedy when parent dies without providing for support of child, 40-6-213.

Custody, services, and earnings of child, 40-6-221.

Parental control over property of child, 40-6-232.

40-4-205. Representation of child. The court may appoint an attorney to represent the interests of a minor dependent child with respect to his support, custody, and visitation. The county attorney and the deputy county attorneys, if any, may not be appointed for this purpose. The court shall enter an order for costs and fees in favor of the child's attorney. The order shall be made against either or both parents, except that if the responsible party is indigent, the costs shall be waived.

History: En. 48-324 by Sec. 24, Ch. 536, L. 1975; R.C.M. 1947, 48-324; amd. Sec. 1, Ch. 93, L. 1979.

Cross-References

Allowable costs, Title 25, ch. 10, part 2.

Attorneys' fees, Title 25, ch. 10, part 3.

Costs — attorney's fees, 40-4-110.

Enforcement of minor's rights, 41-1-202.

40-4-206. Payment of maintenance or support to court — handling fee of clerk. (1) Upon its own motion or upon motion of either party, the court may order at any time that maintenance or support payments be made to the clerk of the district court as trustee for remittance to the person entitled to receive the payments.

(2) The clerk of the district court shall maintain records listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order. The clerk may charge the payor a handling fee of $2 a payment, which must be in addition to the payment. Any handling fee collected by the clerk under this subsection must be paid into the county general fund unless the county has a district court fund. If the county has a district court fund, the amount must be paid into such fund.

(3) The parties affected by the order shall inform the clerk of the district court of any change of address or of other condition that may affect the administration of the order.

History: En. 48-325 by Sec. 25, Ch. 536, L. 1975; R.C.M. 1947, 48-325; amd. Sec. 1, Ch. 532, L. 1985.

Compiler's Comments

1985 Amendment: In (2) inserted second through fourth sentences.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Duties of Clerk of Court, 3-5-501.

Order of support, 40-5-125.

Additional powers of responding court, 40-5-127.

Paternity — enforcement of judgment or order, 40-6-117.

Obligations of trustee, Title 72, ch. 20, part 2.

40-4-207. Assignments. The court may order the person obligated to pay support or maintenance to make an assignment of a part of his periodic earnings or trust income to the person entitled to receive the payments. The assignment is binding on the employer, trustee, or other payor of the funds 2 weeks after service upon him of notice that it has been made. The payor shall withhold from the earnings or trust income payable to the person obligated to support the amount specified in the assignment and shall transmit the payments to the person specified in the order. The payor may deduct from each payment a sum not exceeding $1 as reimbursement for costs. An employer shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this section.

History: En. 48-326 by Sec. 26, Ch. 536, L. 1975; R.C.M. 1947, 48-326.

Cross-References

Earnings of judgment debtor, 25-13-614.

What property subject to attachment, 27-18-102.

Discharge or layoff of employee because of attachment or garnishment prohibited, 39-2-302.

Powers of trustee, 72-21-202.

40-4-208. Modification and termination of provisions for maintenance, support, and property disposition. (1) Except as otherwise provided in 40-4-201(6), a decree may be modified by a court as to maintenance or support only as to installments accruing subsequent to the motion for modification.

(2) (a) Whenever the decree proposed for modification does not contain provisions relating to maintenance or support, modification under subsection (1) may only be made within 2 years of the date of the decree.

(b) Whenever the decree proposed for modification contains provisions relating to maintenance or support, modification under subsection (1) may only be made:

(i) upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable; or

(ii) upon written consent of the parties.

(3) The provisions as to property disposition may not be revoked or modified by a court, except:

(a) upon written consent of the parties; or

(b) if the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(4) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(5) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child but not by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the circumstances.

History: En. 48-330 by Sec. 30, Ch. 536, L. 1975; R.C.M. 1947, 48-330; amd. Sec. 1, Ch. 464, L. 1979.

Cross-References

Unconscionable contract or clause, 30-2-302.

Temporary order or temporary injunction, 40-4-121.

Remedy when parent dies without providing for support of child, 40-6-213.

Minors and adults defined, 41-1-101.

Claims against decedent, 72-3-104.

Creditors' claims, Title 72, ch. 3, part 8.

40-4-209. Security or guaranty to secure support. (1) Upon verified application by a person authorized to enforce or collect a child support obligation, the department of revenue, or the department of social and rehabilitation services showing that a person obligated to pay child support or maintenance pursuant to court or administrative order is delinquent in an amount equal to the total of 6 months' support payments, the court may direct the obligated person to appear and show cause why an order should not be entered ordering that he post bond, give a mortgage, or provide other security or guaranty for the payment of the delinquency.

(2) If the court finds that a delinquency greater than the total of 6 months of support is owed and that the obligated person has the ability to post bond, give a mortgage, or provide security or other guaranty, the court may enter an order requiring him to post bond, give a mortgage, or provide security or guaranty for so long as there is a support delinquency.

(3) The bond or other security may be in an amount up to the total support due for a 2-year period and must be approved by the court. The bond must include the name and address of the issuer. Any person issuing a bond under this section must, if the bond is cancelled, notify the court and the person or public agency entitled to receive payments under the support order.

(4) If the person obligated to pay child support or maintenance fails to make payments as required by the court or administrative order, the person or public agency entitled to receive payment may recover on the bond or other security. The amount recovered on the bond or other security must first be applied toward satisfaction of any support arrearages.

(5) The department shall adopt guidelines which take into account the payment record of the obligated person, the availability of other remedies, and other considerations which it determines relevant for determining whether the procedure provided in this section would carry out the purpose of enforcing payments of child support or would be appropriate in the circumstances. If after application of the guidelines the department determines an application for an order requiring security is not appropriate, it may not request the order.

History: En. Sec. 1, Ch. 521, L. 1985.

Cross-References

Undertakings for security, Title 25, ch. 1, part 4.

Guaranty, indemnity, and suretyship, Title 28, ch. 11.

Mortgages, Title 71, ch. 1.

40-4-210 reserved.

40-4-211. Child custody jurisdiction — commencement of proceedings. (1) A court of this state competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(a) this state:

(i) is the home state of the child at the time of commencement of the proceedings; or

(ii) had been the child's home state within 6 months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reason and a parent or person acting as parent continues to live in this state; or

(b) it is in the best interest of the child that a court of this state assume jurisdiction because:

(i) the child and his parents or the child and at least one contestant have a significant connection with this state; and

(ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(c) the child is physically present in this state and:

(i) has been abandoned; or

(ii) it is necessary in an emergency to protect him because he has been subjected to or threatened with mistreatment or abuse or is neglected or dependent; or

(d) (i) no other state has jurisdiction under prerequisites substantially in accordance with subsections (1)(a), (1)(b), or (1)(c) of this section or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine custody of the child; and

(ii) it is in his best interest that the court assume jurisdiction.

(2) Except under subsections (1)(c) and (1)(d) of this section, physical presence in this state of the child or of the child and one of the contestants is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

(4) A child custody proceeding is commenced in the district court:

(a) by a parent, by filing a petition:

(i) for dissolution or legal separation; or

(ii) for custody of the child in the county in which he is permanently resident or found; or

(b) by a person other than a parent, by filing a petition for custody of the child in the county in which he is permanently resident or found, but only if he is not in the physical custody of one of his parents.

(5) Notice of a child custody proceeding shall be given to the child's parent, guardian, custodian, those persons having physical custody of the child, and all other contestants, who may appear, be heard, and file a responsive pleading. The court, upon a showing of good cause, may permit intervention of other interested parties.

History: En. 48-331 by Sec. 31, Ch. 536, L. 1975; amd. Sec. 11, Ch. 33, L. 1977; amd. Sec. 27, Ch. 537, L. 1977; R.C.M. 1947, 48-331.

Cross-References

Residence — rules for determining, 1-1-215.

Means to carry jurisdiction into effect, 3-1-113.

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Permissive intervention, Rule 24(b), M.R.Civ.P. (see Title 25, ch. 20).

When custody may be awarded without dissolution proceedings, 40-6-224.

Uniform Child Custody Jurisdiction Act — jurisdiction, 40-7-104.

Jurisdiction and venue — abused, neglected, and dependent youths, 41-3-103.

40-4-212. Best interest of child. The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors including:

(1) the wishes of the child's parent or parents as to his custody;

(2) the wishes of the child as to his custodian;

(3) the interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interest;

(4) the child's adjustment to his home, school, and community; and

(5) the mental and physical health of all individuals involved.

History: En. 48-332 by Sec. 32, Ch. 536, L. 1975; R.C.M. 1947, 48-332.

Cross-References

Best interests of the child — custody to father — legitimation, 40-6-130.

When custody may be awarded without dissolution proceedings, 40-6-224.

Guardians of minors, Title 72, ch. 5, part 2.

40-4-213. Temporary orders. (1) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in 40-4-220(1). The court may award temporary custody under the standards of 40-4-212 after a hearing or under the standards of

40-4-212 and 40-4-220(2) before a hearing. If there is no objection, the court may act solely on the basis of the affidavits.

(2) If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interest of the child require that a custody decree be issued.

(3) If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated.

History: En. 48-333 by Sec. 33, Ch. 536, L. 1975; amd. Sec. 12, Ch. 33, L. 1977; R.C.M. 1947, 48-333; amd. Sec. 1, Ch. 410, L. 1979.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

Dissolution of marriage — legal separation, 40-4-104.

Temporary order or temporary injunction, 40-4-121.

Custody of children where husband and wife living separately, 40-6-222.

When custody may be awarded without dissolution proceedings, 40-6-224.

Declaration of purpose of Youth Court Act, 41-5-102.

40-4-214. Interviews. (1) The court may interview the child in chambers to ascertain the child's wishes as to his custodian and as to visitation. The court may permit counsel to be present at the interview. The court shall cause a record of the interview to be made and to be part of the record in the case.

(2) The court may seek the advice of professional personnel, whether or not employed by the court on a regular basis. The advice given shall be in writing and made available by the court to counsel upon request. Counsel may examine as a witness any professional personnel consulted by the court.

History: En. 48-334 by Sec. 34, Ch. 536, L. 1975; R.C.M. 1947, 48-334.

Cross-References

Sittings of court — when private, 3-1-313.

Court reporters — duties, 3-5-603.

Expert witnesses' fees, 26-2-505.

Expert witness, Art. VII, Montana Rules of Evidence (see Title 26, ch. 10).

What constitutes undue influence, 28-2-407.

40-4-215. Investigations and reports. (1) In contested custody proceedings and in other custody proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. The cost of the investigation and report shall be paid according to the final order.

(2) In preparing his report concerning a child, the investigator may consult any person who may have information about the child and his potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if he has reached the age of 16 unless the court finds that he lacks mental capacity to consent. If the requirements of subsection (3) are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing. The

investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom he has consulted for cross-examination. A party may not waive his right of cross-examination prior to the hearing.

History: En. 48-335 by Sec. 35, Ch. 536, L. 1975; R.C.M. 1947, 48-335; amd. Sec. 1, Ch. 277, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "cost of the" before "investigation and report" in the last sentence of (1); substituted "shall be paid according to the final order" for "may be made by the county welfare department" at the end of (1).

Cross-References

Expert witnesses, Art. VII, Montana Rules of Evidence (see Title 26, ch. 10).

Consent in general, Title 28, ch. 2, part 3.

When parent may bring action for the exclusive control of the children — decree, 40-6-223.

40-4-216. Hearings. (1) Custody proceedings shall receive priority in being set for hearing.

(2) The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court deems necessary to determine the best interest of the child.

(3) The court without a jury shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interest, the court may exclude the public from a custody hearing but may admit any person who has a direct and legitimate interest in the particular case or a legitimate educational or research interest in the work of the court.

(4) If the court finds it necessary that the record of any interview, report, investigation, or testimony in a custody proceeding be kept secret to protect the child's welfare, the court may make an appropriate order sealing the record.

History: En. 48-336 by Sec. 36, Ch. 536, L. 1975; R.C.M. 1947, 48-336.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Sittings of court — when private, 3-1-313.

Costs, Title 25, ch. 10.

Allowable costs, Title 25, ch. 10, part 2.

Costs — attorney's fees, 40-4-110.

Hearings and studies in another state — orders to appear, 40-7-120.

Priority of custody proceedings, 40-7-125.

40-4-217. Visitation. (1) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health.

(2) In a proceeding for dissolution of marriage or legal separation, the court may, upon the petition of a grandparent, grant reasonable visitation rights to the grandparent of the child if the court finds, after a hearing, that the visitation would be in the best interest of the child.

(3) The court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child; but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health.

History: En. 48-337 by Sec. 37, Ch. 536, L. 1975; R.C.M. 1947, 48-337; amd. Sec. 3, Ch. 17, L. 1979.

Cross-References

When parent may bring action for the exclusive control of children — decree, 40-6-223.

Grandparent visitation rights, 40-9-102.

40-4-218. Judicial supervision. (1) Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including his education, health care, and religious training, unless the court after hearing finds, upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered or his emotional development significantly impaired.

(2) If both parents or all contestants agree to the order or if the court finds that in the absence of the order the child's physical health would be endangered or his emotional development significantly impaired, the court may order the county welfare department to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out.

History: En. 48-338 by Sec. 38, Ch. 536, L. 1975; R.C.M. 1947, 48-338.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Obligations of parents for the support and education of their children, 40-6-211.

Right of parent to determine the residence of child, 40-6-231.

Endangering the welfare of children, 45-5-622.

Child welfare services, Title 53, ch. 4, part 1.

40-4-219. Modification. (1) The court may in its discretion modify a prior custody decree if it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interest of the child and if it further finds that:

(a) the custodian agrees to the modification;

(b) the child has been integrated into the family of the petitioner with consent of the custodian;

(c) the child's present environment endangers seriously his physical, mental, moral, or emotional health and the harm likely to be caused by a change of environment is outweighed by its advantages to him; or

(d) the child is 14 years of age or older and desires the modification.

(2) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

(3) A custody decree may be modified upon the death of the custodial parent pursuant to 40-4-221.

History: En. 48-339 by Sec. 39, Ch. 536, L. 1975; R.C.M. 1947, 48-339; amd. Sec. 4, Ch. 127, L. 1979; amd. Sec. 2, Ch. 410, L. 1979; amd. Sec. 1, Ch. 449, L. 1983.

Compiler's Comments

1983 Amendment: Near beginning of (1), after "court" substituted "may in its discretion" for "shall not"; after "decree" changed "unless" to "if"; at end of (1) changed "In applying these standards the court shall retain the custodian appointed pursuant to the prior decree unless" to "and if it further finds that"; and inserted (1)(d).

Cross-References

Costs — attorney's fees, 40-4-110.

Modification of custody decree of another state, 40-7-115.

Custodial interference, 45-5-304.

Endangering the welfare of children, 45-5-622.

40-4-220. Affidavit practice. (1) A party seeking a temporary custody order or modification of a custody decree shall submit, together with his moving papers, an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his affidavit, to other parties to the proceeding, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted.

(2) (a) A party seeking a temporary custody order may request that the court grant a temporary assignment of custody ex parte. He shall so request in his moving papers and shall submit an affidavit showing that:

(i) no previous determination of custody has been made by a court and it would be in the child's best interest under the standards of 40-4-212 if temporary custody were placed with the person designated by the moving party; or

(ii) although a previous determination of custody has been made, the child's present environment endangers his physical or emotional health and an immediate change of custody would serve to protect the child's physical or emotional health.

(b) If the court finds from the affidavits submitted by the moving party that a temporary assignment of custody would be in the child's best interest under the standards of 40-4-212 or that the child's physical or emotional health is endangered and would be protected by a temporary assignment of custody, the court shall make an order placing temporary custody with the person designated by the moving party or with some other person designated by the court and shall require all parties to appear and show cause within 20 days from the execution of the order why, in the case of a temporary order issued under subsection (2)(a)(i), the temporary order should not remain in effect until further order of court or, in the case of a temporary order issued under subsection (2)(a)(ii), the court should not restore the child to the custodian from whom the child was removed by the temporary order.

History: En. 48-340 by Sec. 40, Ch. 536, L. 1975; R.C.M. 1947, 48-340; amd. Sec. 3, Ch. 410, L. 1979.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

When parent may bring action for the exclusive control of children — decree, 40-6-223.

Information under oath to be submitted to the court, 40-7-110.

40-4-221. Determination of custody upon death of custodial parent. (1) Upon the death of a parent granted custody of a child, custody shall pass to the noncustodial parent unless one or more parties named in subsection (2) request a custody hearing. The noncustodial parent shall be a party in any proceeding brought under this section.

(2) Upon the death of a parent granted custody of a child, any of the following parties may request a custody hearing and seek custody of the child:

(a) the noncustodial natural parent;

(b) the surviving spouse of the deceased custodial parent;

(c) a person nominated by the will of the deceased custodial parent;

(d) any person nominated by the child if the child is at least 12 years old;

(e) any other person if that person has actual physical control over the child;

(f) any other party whom, upon showing of good cause, the court permits to intervene as an interested party.

(3) The hearing and determination of custody shall be governed by this part.

History: En. Secs. 1, 2, 3, Ch. 127, L. 1979.

Cross-References

Permissive intervention, Rule 24(b), M.R.Civ.P. (see Title 25, ch. 20).

Remedy when parent dies without providing for support of child, 40-6-213.

Custody, services, and earnings of child, 40-6-221.

40-4-222. Declaration of legislative intent — joint custody. The legislature of the state of Montana finds and declares that it is the public policy of this state to assure minor children frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy. The legislature believes that the district courts of the state of Montana have the authority to award joint custody if the court finds joint custody in the best interests of the children in the case then before the court. The intent of 40-4-222 through 40-4-225 is to establish certain guidelines for resolution of custody disputes.

History: En. Sec. 1, Ch. 416, L. 1981.

Cross-References

Best interests of the child — custody to father — legitimation, 40-6-130.

When custody may be awarded without dissolution proceedings, 40-6-224.

40-4-223. Award of joint or separate custody. (1) In custody disputes involving both parents of a minor child, the court shall award custody according to the best interests of the child as set out in 40-4-212:

(a) to both parents jointly; the court shall inquire whether a joint custody agreement was made knowingly and voluntarily; or

(b) to either parent. In making an award to either parent, the court shall consider, along with the factors set out in 40-4-212, which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent and may not prefer a parent as custodian because of the parent's sex.

(2) In making an award, the court shall require the submission of a plan for the implementation of the custody order.

(3) In making an award, the court shall state in its decision the reasons and factors considered in making the award.

History: En. Sec. 2, Ch. 416, L. 1981; amd. Sec. 2, Ch. 727, L. 1985.

Compiler's Comments

1985 Amendment: In (1) after "minor child" substituted "the court shall award custody" for "custody shall be awarded to the following"; in (1)(a) after "jointly" substituted present language for "pursuant to 40-4-224; the court, in its discretion, may require the submission to the court of a plan for the implementation of the joint custody order; or"; in (1)(b) deleted last sentence that read: "The court, in its discretion, may require the submission to the court of a plan for the implementation of the custody order"; and inserted (2) and (3).

Cross-References

Best interests of the child — custody to father — legitimation, 40-6-130.

When custody may be awarded without dissolution proceedings, 40-6-224.

40-4-224. Joint custody — modification — consultation with professionals. (1) Upon application of either parent or both parents for joint custody, the court shall presume joint custody is in the best interests of a minor child unless the court finds, under the factors set forth in 40-4-212, that joint custody is not in the best interests of the minor child. If the court declines to enter an order awarding joint custody, the court shall state in its decision the reasons for denial of an award of joint custody. Objection to joint custody by a parent seeking sole custody is not a sufficient basis for a finding that joint custody is not in the best interests of a child, nor is a finding that the parents are hostile to each other.

(2) For the purposes of this section, "joint custody" means an order awarding custody of the minor child to both parents and providing that the physical custody and residency of the child shall be allotted between the parents in such a way as to assure the child frequent and continuing contact with both parents. The allotment of time between parties shall be as equal as possible; however, each case shall be determined according to its own practicalities with the best interests of the child as the primary consideration.

(3) Any order for joint custody may be modified pursuant to 40-4-219 to terminate the joint custody.

(4) The court may, at any time, direct the parties to consult with appropriate professionals for the purpose of assisting the parties to formulate a plan for implementation of the custody order or to resolve any controversy that has arisen in the implementation of a plan for custody.

History: En. Sec. 3, Ch. 416, L. 1981; amd. Sec. 1, Ch. 496, L. 1985; amd. Sec. 3, Ch. 727, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 496 in (1) in first sentence, after "the court shall", substituted "presume" for "consider whether or not" and after "minor child" inserted remainder of sentence, and inserted third sentence; in (2) in first sentence inserted "physical custody and", substituted "allotted between" for "shared by", and after "and continuing", deleted "(but not necessarily equal)"; inserted second sentence of (2); and in (4) after "The court may", deleted "with the consent of both parties".

Chapter 727 in (4) after "The court may", deleted "with the consent of both parties".

Cross-References

Best interests of the child — custody to father — legitimation, 40-6-130.

When custody may be awarded without dissolution proceedings, 40-6-224.

40-4-225. Access to records by noncustodial parent. Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including but not limited to medical, dental, law enforcement, and school records, may not be denied to a parent because such parent is not the child's custodial parent.

History: En. Sec. 4, Ch. 416, L. 1981.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right to privacy, Art. II, sec. 10, Mont. Const.

Immunization record, 20-5-406.

Youth law enforcement records, 41-5-602.

CHAPTER 5

ENFORCEMENT OF SUPPORT

Part 1 — Uniform Reciprocal Enforcement of Support Act

Section
40-5-101. Short title.
40-5-102. Purposes.

40-5-103. Definitions.
40-5-104. Remedies additional to those now existing.
40-5-105. Extent of duties of support.
40-5-106. Interstate rendition.
40-5-107. Conditions of interstate rendition.
40-5-108. Choice of law.
40-5-109. Remedies of state or political subdivision furnishing support.
40-5-110. How duties of support enforced.
40-5-111. Jurisdiction.
40-5-112. Contents and filing of petition for support — venue.
40-5-113. Officials to represent obligee.
40-5-114. Petition for a minor.
40-5-115. Duty of initiating court.
40-5-116. Costs and fees.
40-5-117. Jurisdiction by arrest.
40-5-118. State information agency.
40-5-119. Duty of the court and officials of this state as responding state.
40-5-120. Further duties of court and officials in the responding state.
40-5-121. Hearing and continuance.
40-5-122. Immunity from criminal prosecution.
40-5-123. Husband and wife communications not privileged.
40-5-124. Rules of evidence — application.
40-5-125. Order of support.
40-5-126. Responding court to transmit copies to initiating court.
40-5-127. Additional powers of responding court.
40-5-128. Paternity.
40-5-129. Additional duties of responding court.
40-5-130. Additional duty of initiating court.
40-5-131. Proceedings not to be stayed — when.
40-5-132. Application of payments.
40-5-133. Effect of participation in proceeding.
40-5-134. Intrastate application.
40-5-135. Appeals.
40-5-136. Additional remedies.
40-5-137. Registration.
40-5-138. Registry of foreign support orders.
40-5-139. Official to represent obligee.
40-5-140. Registration procedure — notice.
40-5-141. Effect of registration — enforcement procedure.
40-5-142. Uniformity of interpretation.

Part 2 — Administrative Enforcement of Support

40-5-201. Definitions.
40-5-202. Department of revenue — powers and duties regarding collection of support debt.
40-5-203. Support enforcement services.
40-5-204. Cooperation by person having custody of child.
40-5-205. Payment of support money collected to support enforcement and collections unit — notice.
40-5-206. Central unit for information and administration — cooperation enjoined — availability of records.
40-5-207. Department authorized to enforce maintenance awards.
40-5-208 through 40-5-210 reserved.
40-5-211. Petition for support order by married parent with minor children receiving public assistance.
40-5-212. Petition for support order by married parent with minor children receiving public assistance — powers of court.
40-5-213. Financial statements by parent whose absence is basis of application for public assistance — penalty.
40-5-214. Scale of suggested minimum contributions.
40-5-215 through 40-5-220 reserved.
40-5-221. Debt to state by natural or adoptive parents — limitations.
40-5-222. Support debt based upon subrogation to or assignment of judgment — notice — content — action to collect.

40-5-223. Notice of support liability based upon payment of public assistance — notice — contents — collection warrant — fair hearing.
40-5-224. Finding of support liability based upon payment of public assistance — warrant for distraint — bond to release warrant — action to collect.
40-5-225. Notice and finding of financial responsibility of responsible parent — administrative procedure.
40-5-226. Administrative hearing — nature — place — time — determinations — failure to appear — entry of findings.
40-5-227. Filing and docketing of final orders — orders effective as district court decrees.
40-5-228 through 40-5-240 reserved.
40-5-241. Warrant for distraint.
40-5-242. Civil liability upon failure to comply with warrant or to honor assignment of wages.
40-5-243. Release of excess to debtor.
40-5-244. Banks and savings and loan associations — service effective only as to branch office served.
40-5-245. Satisfaction of debt after levy on property — redemption.
40-5-246. Release of distraint and return of seized property — effect.
40-5-247 through 40-5-250 reserved.
40-5-251. Debt payment schedule.
40-5-252. Interest on debts due — waiver.
40-5-253. Administrative findings and order — judicial review.
40-5-254. Statutory limitations.
40-5-255. Charging off child support debts as uncollectible.
40-5-256. Employee debtor rights protected — limitation.
40-5-257. Assignment of earnings to be honored — effect.

Part 3 — Child Support Income Deduction

40-5-301. Short title.
40-5-302. Purpose.
40-5-303. Petition for income deduction — who may initiate.
40-5-304. When child support payments considered delinquent.
40-5-305. Notice.
40-5-306. Discharge of delinquency.
40-5-307. Delinquency of child support denied — hearing.
40-5-308. Order for deduction from income for child support payments.
40-5-309. Amount to be deducted from income.
40-5-310. Priority of income deduction.
40-5-311. Remedy not exclusive.

Part 4 — Child Support Enforcement Act Administrative Income Withholding

40-5-401. Short title.
40-5-402. Purpose.
40-5-403. Definitions.
40-5-404. Remedies additional to those now existing.
40-5-405. Rulemaking authority.
40-5-406 through 40-5-410 reserved.
40-5-411. Income withholding.
40-5-412. Initiation of income withholding procedures.
40-5-413. Notice of intent to withhold income.
40-5-414. Hearing.
40-5-415. Order to withhold income.
40-5-416. Determination of amount of income to be withheld.
40-5-417. Modification or termination of withholding orders.
40-5-418. Payment records.
40-5-419 and 40-5-420 reserved.
40-5-421. Duties of payor.
40-5-422. Obligor rights protected.
40-5-423. Priority of income withholding.
40-5-424. Civil liability for failure to comply with income withholding order.
40-5-425 through 40-5-430 reserved.

40-5-431. Registration of interstate income withholding orders.
40-5-432. Application for interstate withholding.
40-5-433. Additional duties of department in interstate income withholding.
40-5-434. Initiation of income withholding in other jurisdictions.

Part 1

Uniform Reciprocal Enforcement of Support Act

Part Cross-References

When action not abated by death or other disability, 27-1-501.

Duties of husband and wife as to support, 40-2-102.

Support of spouse, 40-2-103.

Child support, 40-4-204.

Registration and enforcement of interstate income withholding orders, 40-5-431 through 40-5-434.

40-5-101. Short title. This part may be cited as the "Revised Uniform Reciprocal Enforcement of Support Act (1968)".

History: En. Sec. 42, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-82.

40-5-102. Purposes. The purposes of this part are to improve and extend by reciprocal legislation the enforcement of duties of support.

History: En. Sec. 1, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-41.

40-5-103. Definitions. (1) "Court" means the district court of this state and, when the context requires, means the court of any other state as defined in a substantially similar reciprocal law.

(2) "Duty of support" means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court, whether interlocutory or final, or whether incidental to an action for divorce, separation, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid.

(3) "Governor" includes any person performing the functions of governor or the executive authority of any state covered by this part.

(4) "Initiating state" means a state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "Initiating court" means the court in which a proceeding is commenced.

(5) "Law" includes both common and statutory law.

(6) "Obligee" means a person, including a state or political subdivision, to whom a duty of support is owed or a person, including a state or political subdivision, that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(7) "Obligor" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

(8) "Prosecuting attorney" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(9) "Register" means to file in the registry of foreign support orders.

(10) "Registering court" means any court of this state in which a support order of a rendering state is registered.

(11) "Rendering state" means a state in which the court has issued a support order for which registration is sought or granted in the court of another state.

(12) "Responding state" means a state in which any responsive proceeding pursuant to the proceeding in the initiating state is commenced.

(13) "Responding court" means the court in which the responsive proceeding is commenced.

(14) "State" includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

(15) "Support order" means any judgment, decree, or order of support in favor of an obligee whether temporary or final or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

History: En. Sec. 2, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-42.

40-5-104. Remedies additional to those now existing. The remedies herein provided are in addition to and not in substitution for any other remedies.

History: En. Sec. 3, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-43.

Cross-References

What acts or omissions are contempts, 3-1-501.

Payment of maintenance or support to court, 40-4-206.

Remedy when parent dies without providing for support, 40-6-213.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

40-5-105. Extent of duties of support. Duties of support arising under the law of this state, when applicable under 40-5-108, bind the obligor present in this state regardless of the presence or residence of the obligee.

History: En. Sec. 4, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-44.

Cross-References

Residence — rules for determining, 1-1-215.

Duties of husband and wife as to support, 40-2-102.

Support of spouse, 40-2-103.

Child support, 40-4-204.

Obligations of parents for the support and education of their children, 40-6-211.

Married person not bound for support of spouse's children by former marriage, 40-6-217.

40-5-106. Interstate rendition. The governor of this state may:

(1) demand of the governor of another state the surrender of a person found in that state who is charged criminally in this state with failing to provide for the support of any person; or

(2) surrender on demand by the governor of another state a person found in this state who is charged criminally in that state with failing to provide for the support of any person. Provisions for extradition of criminals not inconsistent with this part apply to the demand even if the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and has not fled therefrom. The demand, the oath, and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding state.

History: En. Sec. 5, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-45.

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

Nonsupport, 45-5-621.

Uniform Criminal Extradition Act, Title 46, ch. 30.

40-5-107. Conditions of interstate rendition. (1) Before making the demand upon the governor of another state for the surrender of a person charged criminally in this state with failing to provide for the support of a person, the governor of this state may require any prosecuting attorney of this state to satisfy him that at least 60 days prior thereto the obligee initiated proceedings for support under this part or that any proceeding would be of no avail.

(2) If, under a substantially similar law, the governor of another state makes a demand upon the governor of this state for the surrender of a person charged criminally in that state with failure to provide for the support of a person, the governor may require any prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the governor that a proceeding would be effective but has not been initiated, he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(3) If proceedings have been initiated and the person demanded has prevailed therein, the governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the governor may decline to honor the demand if the person demanded is complying with the support order.

History: En. Sec. 6, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-46.

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

Nonsupport, 45-5-621.

Uniform Criminal Extradition Act, Title 46, ch. 30.

40-5-108. Choice of law. Duties of support applicable under this part are those imposed under the laws of any state where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

History: En. Sec. 7, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-47.

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

40-5-109. Remedies of state or political subdivision furnishing support. If a state or a political subdivision furnishes support to an individual obligee, it has the same right to initiate a proceeding under this part as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

History: En. Sec. 8, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-48.

Cross-References

Substitution of successor to public officer, Rule 25(d), M.R.Civ.P. (see Title 25, ch. 20).

Spousal privilege, 26-1-802.

Administrative enforcement of support for dependent children, Title 40, ch. 5, part 2.

Parents liable to Department for Aid to Dependent Children payments, 53-4-248.

40-5-110. How duties of support enforced. All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this part, including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

History: En. Sec. 9, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-49.

Cross-References

Imprisonment for debt, Art. II, sec. 27, Mont. Const.

Contempts, Title 3, ch. 1, part 5.

Married persons may sue and be sued, 40-2-107.

Administrative enforcement of support for dependent children, Title 40, ch. 5, part 2.

Remedy when parent dies without providing for support of child, 40-6-213.

Civil action to enforce duty to support parent, 40-6-303.

40-5-111. Jurisdiction. Jurisdiction of any proceeding under this part is vested in the district court.

History: En. Sec. 10, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-50.

Cross-References

Means to carry jurisdiction into effect, 3-1-113.

District Court — original jurisdiction, 3-5-302.

40-5-112. Contents and filing of petition for support — venue. (1) The petition shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought and all other pertinent information. The obligee may include in or attach to the petition any information which may help in locating or identifying the obligor, including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his social security number.

(2) At the time of filing the petition, the obligee shall also file with the court an affidavit as required by 53-4-248 stating whether he has received public assistance from any source and, if he has received public assistance, that he has notified the department of social and rehabilitation services in writing of the pending action.

(3) The petition may be filed in the appropriate court of any state in which the obligee resides. The court may not decline or refuse to accept and forward the petition on the ground that it should be filed with some other court of this or any other state where there is pending another action for separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

History: En. Sec. 11, Ch. 237, L. 1969; amd. Sec. 6, Ch. 379, L. 1977; R.C.M. 1947, 93-2601-51; amd. Sec. 3, Ch. 33, L. 1979.

Cross-References

Rules for determining residence, 1-1-215.

Administrative enforcement of support for dependent children, Title 40, ch. 5, part 2.

40-5-113. Officials to represent obligee. If this state is acting as an initiating state, the prosecuting attorney, upon the request of the court, the department of social and rehabilitation services, the department of revenue, a county commissioner, or other local welfare officer, shall represent the obligee in any proceeding under this part. If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may order him to comply with the request of the court or may undertake the representation.

History: En. Sec. 12, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-52; amd. Sec. 1, Ch. 189, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "the department of revenue" following "department of social and rehabilitation services".

Cross-References

General duties of Attorney General, 2-15-501.

Department of Revenue — powers and duties regarding collection of support debt, 40-5-202.

Parents liable to Department for Aid to Dependent Children payments, 53-4-248.

40-5-114. Petition for a minor. A petition on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

History: En. Sec. 13, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-53.

Cross-References

Enforcement of minor's rights, 41-1-202.

Minor cannot disaffirm certain obligations, 41-1-306.

40-5-115. Duty of initiating court. If the initiating court finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding state may obtain jurisdiction of the obligor or his property, it shall so certify and cause three copies of the petition and its certificate and one copy of this part to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating state. If the name and address of the responding court is unknown and the responding state has an information agency comparable to that established in the initiating state, it shall cause the copies to be sent to the state information agency or other proper official of the responding state, with a request that the agency or official forward them to the proper court and that the court of the responding state acknowledge their receipt to the initiating court.

History: En. Sec. 14, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-54.

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

40-5-116. Costs and fees. An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee, but it may direct that all fees and costs requested by the initiating court and incurred in this state when acting as a responding state, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid in whole or in part by the obligor or by the state or political subdivision thereof. These costs or fees do not have priority over amounts due to the obligee.

History: En. Sec. 15, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-55.

Cross-References

Fees of Clerk of District Court, 25-1-201.

Costs, Title 25, ch. 10.

40-5-117. Jurisdiction by arrest. If the court of this state believes that the obligor may flee, it may:

(1) as an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

(2) as a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

History: En. Sec. 16, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-56.

Cross-References

Imprisonment for debt, Art. II, sec. 27, Mont. Const.

Arrest and bail in civil actions, Title 27, ch. 16.

Giving bail — civil actions, Title 27, ch. 16, part 4.

Uniform Criminal Extradition Act, Title 46, ch. 30.

40-5-118. State information agency. (1) The state department of social and rehabilitation services is designated as the state information agency under this part.

(2) It shall:

(a) compile a list of the courts and their addresses in this state having jurisdiction under this part and transmit it to the state information agency of every other state which has adopted this or a substantially similar law. Upon the adjournment of each session of the legislature the agency shall distribute copies of any amendments to this part and a statement of their effective date to all other state information agencies.

(b) maintain a register of lists of courts received from other states and transmit copies thereof promptly to every court in this state having jurisdiction under this part; and

(c) forward to the court in this state which has jurisdiction over the obligor or his property petitions, certificates, and copies of the reciprocal enforcement of support act it receives from courts or information agencies of other states.

(3) If the state information agency does not know the location of the obligor or his property in the state and no state location service is available, it shall use all means at its disposal to obtain this information, including the examination of official records in the state and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices both state and federal where such offices are able to cooperate, and requests made to the social security administration as permitted by the Social Security Act, as amended.

(4) After the deposit of three copies of the petition and certificate and one copy of the reciprocal enforcement of support act of the initiating state with the clerk of the appropriate court, if the state information agency knows or believes that the prosecuting attorney is not prosecuting the case diligently, it shall inform the attorney general who may undertake the representation.

History: En. Sec. 17, Ch. 237, L. 1969; amd. Sec. 48, Ch. 121, L. 1974; R.C.M. 1947, 93-2601-57.

Cross-References

Powers and duties of Department of Social and Rehabilitation Services, 53-2-201.

40-5-119. Duty of the court and officials of this state as responding state. (1) After the responding court receives copies of the petition, certificate, and reciprocal enforcement of support act from the initiating court, the clerk of the court shall docket the case and notify the prosecuting attorney of his action.

(2) The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this state to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

(3) If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may order him to comply with the request of the court or may undertake the representation.

History: En. Sec. 18, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-58.

Cross-References

Attorney General — general duties, 2-15-501.

Docket, 3-5-508.

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

40-5-120. Further duties of court and officials in the responding state. (1) The prosecuting attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the petition or otherwise the court cannot obtain jurisdiction, the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the initiating court.

(2) If the obligor or his property is not found in the county and the prosecuting attorney discovers that the obligor or his property may be found in another county of this state or in another state, he shall so inform the court. Thereupon the clerk of the court shall forward the documents received from the court in the initiating state to a court in the other county or to a court in the other state or to the information agency or other proper official of the other state with a request that the documents be forwarded to the proper court. All powers and duties provided by this part apply to the recipient of the documents so forwarded. If the clerk of a court of this state forwards documents to another court, he shall forthwith notify the initiating court.

(3) If the prosecuting attorney has no information as to the location of the obligor or his property, he shall so inform the initiating court.

History: En. Sec. 19, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-59.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

General duties of Clerk of the District Court, 3-5-501.

Duties of County Attorneys related to state matters, 7-4-2716.

Effect of judgment of final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

40-5-121. Hearing and continuance. If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense, the court, upon request of either party, may continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

History: En. Sec. 20, Ch. 237, L. 1969; amd. Sec. 24, Ch. 33, L. 1977; R.C.M. 1947, 93-2601-60.

Cross-References

Depositions — persons before whom taken generally, Rule 28, M.R.Civ.P. (see Title 25, ch. 20).

40-5-122. Immunity from criminal prosecution. If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

History: En. Sec. 21, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-61.

Cross-References

Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

Perjury, 45-7-201.

False swearing, 45-7-202.

40-5-123. Husband and wife communications not privileged. Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this part. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

History: En. Sec. 22, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-62.

Cross-References

Spousal privilege, 26-1-802.

40-5-124. Rules of evidence — application. In any hearing for the civil enforcement of this part, the court is governed by the rules of evidence applicable in a civil court action in the district court. If the action is based on a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity (40-5-128) or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

History: En. Sec. 23, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-63.

Cross-References

Judgments for money or the possession of property, 25-13-201.

Effect of foreign judgment, 26-3-205.

Montana Rules of Evidence, Title 26, ch. 10.

Custodial interference, 45-5-304.

40-5-125. Order of support. If the responding court finds a duty of support, it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this part shall require that payments be made to the clerk of the court of the responding state. The clerk may charge a handling fee in accordance with 40-4-206. The court and prosecuting attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any county in which it appears that proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

History: En. Sec. 24, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-64; amd. Sec. 2, Ch. 532, L. 1985.

Compiler's Comments

1985 Amendment: Inserted third sentence authorizing handling fee.

Cross-References

Payment of maintenance or support to court, 40-4-206.

Department of Revenue — powers and duties regarding collection of support debt, 40-5-202.

Parents liable to Department for Aid to Dependent Children payments, 53-4-248.

40-5-126. Responding court to transmit copies to initiating court. The responding court shall cause a copy of all support orders to be sent to the initiating court.

History: En. Sec. 25, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-65.

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

40-5-127. Additional powers of responding court. In addition to the foregoing powers a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular to:

(1) require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due;

(2) require the obligor to report personally and to make payments at specified intervals to the clerk; and

(3) punish under the power of contempt the obligor who violates any order of the court.

History: En. Sec. 26, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-66.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Payment of maintenance or support to court, 40-4-206.

40-5-128. Paternity. If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise, the court may adjourn the hearing until the paternity issue has been adjudicated.

History: En. Sec. 27, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-67.

Cross-References

How parent and child relationship established, 40-6-104.

40-5-129. Additional duties of responding court. A responding court has the following duties which may be carried out through the clerk of the court:

(1) to transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise; and

(2) to furnish to the initiating court upon request a certified statement of all payments made by the obligor.

History: **En. Sec. 28, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-68.**

Cross-References

Payment of maintenance or support to court, 40-4-206.

40-5-130. Additional duty of initiating court. An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the clerk of the court.

History: **En. Sec. 29, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-69.**

Cross-References

Payment of maintenance or support to court, 40-4-206.

40-5-131. Proceedings not to be stayed — when. A responding court may not stay the proceeding or refuse a hearing under this part because of any pending or prior action or proceeding for separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other state. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the petition being heard, the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter, the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

History: **En. Sec. 30, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-70; amd. Sec. 4, Ch. 33, L. 1979.**

Cross-References

Stay on motion for new trial or for judgment, Rule 62(b), M.R.Civ.P. (see Title 25, ch. 20).

40-5-132. Application of payments. A support order made by a court of this state pursuant to this part does not nullify and is not nullified by a support order made by a court of this state pursuant to any other law or by a support order made by a court of any other state pursuant to a substantially similar law or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another state shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this state.

History: **En. Sec. 31, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-71.**

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

40-5-133. Effect of participation in proceeding. Participation in any proceeding under this part does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

History: En. Sec. 32, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-72.

Cross-References

Jurisdiction of persons, Rule 4B, M.R.Civ.P. (see Title 25, ch. 20).

40-5-134. Intrastate application. This part applies if both the obligee and the obligor are in this state but in different counties. If the court of the county in which the petition is filed finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another county in this state may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the petition and a certification of the findings to the court of the county in which the obligor or his property is found. The clerk of the court of the county receiving these documents shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court in the county to which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this state as a responding state.

History: En. Sec. 33, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-73.

Cross-References

General duties of Clerk of the District Court, 3-5-501.

Effect of judgment or final order — when conclusive, 26-3-201.

40-5-135. Appeals. If the attorney general is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may:

(1) perfect an appeal to the proper appellate court if the support order was issued by a court of this state; or

(2) if the support order was issued in another state, cause the appeal to be taken in the other state. In either case expenses of appeal may be paid on his order from funds appropriated for his office.

History: En. Sec. 34, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-74.

Cross-References

From what judgment or order an appeal may be taken, Rule 1, M.R.App.Civ.P. (see Title 25, ch. 21).

40-5-136. Additional remedies. If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in the following sections.

History: En. Sec. 35, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-75.

40-5-137. Registration. The obligee may register the foreign support order in a court of this state in the manner, with the effect, and for the purposes herein provided.

History: En. Sec. 36, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-76.

Cross-References

Register of actions, 3-5-504.

40-5-138. Registry of foreign support orders. The clerk of the court shall maintain a registry of foreign support orders in which he shall file foreign support orders.

History: En. Sec. 37, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-77.

Cross-References

Register of actions, 3-5-504.

Judgment book, 3-5-507.

40-5-139. Official to represent obligee. (1) If this state is acting either as a rendering or a registering state, the prosecuting attorney, upon the request of the court, a state department of social and rehabilitation services, a county commissioner, or other local welfare official, shall represent the obligee in proceeding under this part.

(2) If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may order him to comply with the request of the court or may undertake the representation.

History: En. Sec. 38, Ch. 237, L. 1969; amd. Sec. 48, Ch. 121, L. 1974; R.C.M. 1947, 93-2601-78.

Cross-References

General duties of Attorney General, 2-15-501.

Parents liable to Department for Aid to Dependent Children payments, 53-4-248.

40-5-140. Registration procedure — notice. (1) An obligee seeking to register a foreign support order in a court of this state shall transmit to the clerk of the court:

(a) three certified copies of the order with all modifications thereof;

(b) one copy of the reciprocal enforcement of support act of the state in which the order was made; and

(c) a statement, verified and signed by the obligee, showing the post-office address of the obligee, the last known place of residence and post-office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the states in which the order is registered.

(2) Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the registry of foreign support orders. The filing constitutes registration under this part.

(3) Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post-office address of the obligee. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

History: En. Sec. 39, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-79.

Cross-References

General duties of Clerk of the District Court, 3-5-501.

Register of actions, 3-5-504.

Docket, 3-5-508.

Fees of the Clerk of the District Court, 25-1-201.

40-5-141. Effect of registration — enforcement procedure. (1) Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this state. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this state and may be enforced and satisfied in like manner.

(2) The obligor has 20 days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition, the registered support order is confirmed.

(3) At the hearing to enforce the registered support order, the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering state. If he shows to the court any ground upon which enforcement of a support order of this state may be stayed, the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this state.

History: En. Sec. 40, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-80.

Cross-References

Register of actions, 3-5-504.

Effect of judicial record of another state, 26-3-203.

Effect of foreign judgment, 26-3-205.

40-5-142. Uniformity of interpretation. This part shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 41, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-81.

Part 2

Administrative Enforcement of Support

Part Cross-References

Consumer credit reports — use of child support obligation information, 31-3-127.

Reciprocal Agreement for Collection of Wages Act of 1977, Title 39, ch. 3, part 3.

Child Support Enforcement Act of 1985, Title 40, ch. 5, part 4.

40-5-201. Definitions. As used in this part, the following definitions apply:

(1) "Child" or "dependent child" means any person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States.

(2) "Department" means the department of revenue.

(3) "Director" means the director of the department of revenue or his authorized representative.

(4) "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld.

(5) "District court order" means any judgment or order of the district court of the state of Montana or an order of a court of appropriate jurisdiction of another state ordering payment of a set or determinable amount of support money.

(6) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and specifically includes periodic payments under pension or retirement programs or insurance policies of any type. "Earnings" specifically includes all gain derived from capital, labor, or both combined, including profit gained through sale or conversion of capital assets.

(7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a dependent child or children.

(8) "Public assistance" means any type of monetary or other assistance, including medical and foster care benefits, furnished to a person by a state or county agency, regardless of the original source of the assistance.

(9) "Responsible parent" means the natural or adoptive parent of a dependent child.

(10) "Support debt" or "support obligation" means:

(a) the sum created by the failure to provide support to a dependent child under the laws of this state or the decree of any court of appropriate jurisdiction ordering a sum to be paid as child support; or

(b) the sum created by a decree or order of any court of appropriate jurisdiction ordering a sum to be paid as spousal maintenance under chapter 4, part 2, of this title when the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child of whom the person awarded maintenance is the custodial parent.

History: En. Sec. 1, Ch. 612, L. 1979; amd. Sec. 1, Ch. 561, L. 1985.

Compiler's Comments

1985 Amendment: In (10), in introductory language inserted "or support obligation" and inserted (b).

40-5-202. Department of revenue — powers and duties regarding collection of support debt. (1) Whenever the department of social and rehabilitation services receives an application for public assistance on behalf of a child and it appears to the satisfaction of that department that the child has been abandoned by his parents; the child and one parent have been abandoned by the other parent; or the parent or other person who has a responsibility for the care, support, or maintenance of such child has failed or neglected to give proper care or support to the child, the department of social and rehabilitation services shall promptly refer the matter to the department of revenue for action under the provisions of this part, the abandonment or nonsupport statutes, or other appropriate statutes of this state to insure that the parent or other person responsible pays for the care, support, or maintenance of the dependent child.

(2) In the event that public assistance is furnished by a state or county agency or in instances where the department has contracted to collect support, the department shall become trustee of any cause of action of the dependent child or the person having legal custody of the dependent child to recover support due to that obligee from any person and may bring and maintain the action either in the department's own name or in the name of the obligee.

(3) The department has the power of attorney to act in the name of any recipient of public assistance in endorsing and cashing any and all drafts,

checks, money orders, or other negotiable instruments received by the department and representing support payments for children in whose behalf public assistance has been previously paid.

(4) For purposes of prosecuting any civil action pursuant to this part, the department is a real party in interest upon the payment of public assistance. No obligee shall act to prejudice the rights of the department after the receipt of public assistance.

(5) No agreement between any obligee and any obligor either relieving an obligor of any duty of support or purporting to settle past, present, or future support obligations either as settlement or prepayment may act to reduce or terminate any rights of the department to recover from that obligor for support debt provided unless the department has consented to the agreement in writing.

(6) The department may petition a court for modification of any court order on the same basis as a party to that action would have been entitled to do.

(7) The department shall be subrogated to the right of the child or children or person having the care, custody, and control of the child or children to maintain any civil action or execute any administrative remedy existing under the laws of the state to obtain reimbursement of money thus spent.

(8) If a district court orders an amount of support to be paid by a responsible parent, the department shall be subrogated to the debt created by the order and the money judgment shall be determined to be in favor of the department. This subrogation applies both to:

(a) the lesser of the amount paid by the department in public assistance money to or for the benefit of a dependent child or children of the responsible parent or the amount of support contained in the court order; and

(b) to any amount allocated to the benefit of the children on the basis of providing necessities for the caretaker of the children.

(9) The department may adopt and enforce such rules as may be necessary to carry out the provisions of this part.

(10) The department, for the purposes mentioned in this part, through its director or the director's authorized representatives, may administer oaths to certify official acts, issue subpoenas, and compel witnesses and the production of books, accounts, documents, and evidence.

History: En. Sec. 2, Ch. 612, L. 1979; amd. Sec. 1, Ch. 188, L. 1981; amd. Sec. 2, Ch. 561, L. 1985.

Compiler's Comments

1985 Amendment: In (8), at end of introductory clause, substituted "This subrogation applies both to" for "This subrogation shall apply to temporary spouse support orders and family maintenance orders up to"; in (8)(a), at beginning inserted "(a) the lesser of" and at end inserted "of the responsible parent or the amount of support contained in the court order"; and in (8)(b) at beginning of sentence inserted "(b) to any amount".

1981 Amendment: Inserted "orders" following "district court" in the first line of (8); substituted "the director's" for "his" in (10).

Cross-References

Officers who may administer oaths, 1-6-101.

Issuance of subpoena, 26-2-102.

Modification of support, 40-4-208.

Obligations of parents, Title 40, ch. 6, part 2.

How evidence of abandonment established, 41-5-503.

Endangering the welfare of children, 45-5-622.

Parents liable to Department for Aid to Dependent Children payments, 53-4-248.

40-5-203. Support enforcement services. (1) The department may accept applications for support enforcement services on behalf of persons who are not recipients of public assistance and may take appropriate action to establish or enforce support obligations against persons owing a duty to pay support.

(2) The department may establish by rule reasonable standards necessary to limit applications for support enforcement services. These standards shall take into account the earnings, income, and other resources already available to support the person for whom a support obligation exists.

(3) The department may not charge the applicant a fee as compensation for services rendered in establishment of or enforcement of support obligations. However, the department may charge a fee to the person from whom the support is being collected. This fee must be in addition to the support payment. The department shall by rule establish reasonable fees commensurate with the cost of enforcement support services to be paid by the person from whom the support is being collected. When payments are scheduled to be paid on an installment basis, a portion of the collection fee owed to the department shall be added to each payment. If the person from whom the support is being collected makes a payment in an amount that is less than the support payment plus the collection fee for that payment, the department may deduct a percentage of the total sum collected which represents the department's standard proportion. The department may, upon a showing of necessity, waive or defer any such fee.

History: En. Sec. 3, Ch. 612, L. 1979; amd. Sec. 1, Ch. 672, L. 1985.

Compiler's Comments

1985 Amendment: In (3), in first sentence substituted "may not charge the applicant a fee" for "may charge a fee", and substituted second through fifth sentences for "This fee shall be agreed on in writing with the parent, custodian, or guardian of the person for whom a support obligation is owed or that person if no parent, custodian, or guardian exists. An initiation fee as a portion of the collection fee may be charged the applicant by the department. The department shall by rule establish reasonable fees for support enforcement services, and the schedule of fees shall be made available to all applicants for support enforcement services".

Cross-References

Department of Revenue to monitor and enforce child support payments, 40-5-412.

40-5-204. Cooperation by person having custody of child. Any person having the care, custody, or control of any dependent child or children shall cooperate with the department in establishing the paternity of such child and obtaining support payments.

History: En. Sec. 4, Ch. 612, L. 1979.

Cross-References

How duties of support enforced, 40-5-110.

Paternity, 40-5-128.

How parent and child relationship established, 40-6-104.

40-5-205. Payment of support money collected to support enforcement and collections unit — notice. If written notice by the department is given to the responsible person or to the clerk of the court, if appropriate, that the children for whom a support obligation exists are receiving public assistance, then any support money paid by the person or persons responsible for support as a result of any action shall be paid through the support enforcement and collections unit of the department of revenue.

History: En. Sec. 5, Ch. 612, L. 1979.

Cross-References

Parents liable to Department for Aid to Dependent Children payments, 53-4-248.

40-5-206. Central unit for information and administration — cooperation enjoined — availability of records. (1) The department shall establish a central unit to serve as a registry for the receipt of information, for answering interstate inquiries concerning deserting parents, to coordinate and supervise departmental activities in relation to deserting parents, and to assure effective cooperation with law enforcement agencies.

(2) To effectuate the purposes of this section, the director may request from state, county, and local agencies all information and assistance as authorized by this part. All state, county, and city agencies, officers, and employees shall cooperate in the location of parents who have abandoned or deserted or are failing to support children receiving public assistance and shall on request supply the department with all information available relative to the location, income, and property of the parents.

(3) Except as provided in 31-3-127, any records established pursuant to the provisions of this section are available only to the department, county attorneys, and courts having jurisdiction in support and abandonment proceedings or actions or agencies in other states engaged in the enforcement of support of minor children as authorized by the rules of the department and by the provisions of the federal Social Security Act.

History: En. Sec. 10, Ch. 612, L. 1979; amd. Sec. 3, Ch. 543, L. 1985.

Compiler's Comments

1985 Amendment: In (3) at beginning inserted exception clause.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

40-5-207. Department authorized to enforce maintenance awards. When a judgment or order creating a child support obligation also contains a judgment or order for the support of a former spouse and the former spouse is the custodial parent of the child, the department may collect and enforce spousal support under this part.

History: En. Sec. 4, Ch. 561, L. 1985.

40-5-208 through 40-5-210 reserved.

40-5-211. Petition for support order by married parent with minor children receiving public assistance. (1) Any married parent with minor children, natural or legally adopted, who is receiving public assistance in the absence of a support order may apply to the district court of the county in which the parent resides or in which the spouse may be found for an order upon such spouse, if such spouse is the natural or adoptive mother or father of such children, to provide for the parent's support and the support of the parent's minor children by filing in the county a petition setting forth the facts and circumstances upon which the parent relies for the order.

(2) If it appears to the satisfaction of the court that the parent is without funds to employ counsel, the department may file a petition on behalf of the parent. If satisfied that a just cause exists, the court shall direct that a citation be issued to the spouse requiring that spouse to appear at a time set by the court to show cause why an order of support should not be entered in the matter.

History: En. Sec. 6, Ch. 612, L. 1979.

Cross-References

Obligations of parents for the support and education of their children, 40-6-211.

Adoption of children, Title 40, ch. 8, part 1.

Parents liable to Department for Aid to Dependent Children payments, 53-4-248.

40-5-212. Petition for support order by married parent with minor children receiving public assistance — powers of court. (1) After hearing the petition for an order of support, the court shall make an order granting or denying it and fixing the terms and amount of the support.

(2) The court has the same power to compel the attendance of witnesses and the production of testimony as in actions and suits, make such decree or orders as are equitable in view of the circumstances of both parties, and punish violations as other contempts are punished.

History: En. Sec. 7, Ch. 612, L. 1979.

Cross-References
Contempts, Title 3, ch. 1 part 5.
Subpoenas, Title 26, ch. 2, part 1.
Duties of witnesses, Title 26, ch. 2, part 3.
Child support, 40-4-204.

40-5-213. Financial statements by parent whose absence is basis of application for public assistance — penalty. (1) Any parent in the state whose absence is the basis upon which an application is filed for public assistance on behalf of a child shall complete a statement, under oath, of his current monthly income, his total income over the past 36 months, the number of dependents for whom he is providing support, the amount he is contributing regularly toward the support of all children for whom application for such assistance is made, his current monthly living expenses, and all other information pertinent to determining his ability to support his children. The statement shall be provided upon a demand made by the department. If assistance based upon the application is granted on behalf of the child, additional statements shall be filed as required by the department until the child is no longer receiving public assistance.

(2) Failure to comply with this section is a misdemeanor.

History: En. Sec. 8, Ch. 612, L. 1979.

Cross-References
Misdemeanor defined, 45-2-101.
Misdemeanor — no penalty specified, 46-18-212.
Application for assistance, 53-4-232.
Parents liable to Department for Aid to Dependent Children payments, 53-4-248.

40-5-214. Scale of suggested minimum contributions. (1) The department shall establish a scale of suggested minimum contributions to assist counties and courts in determining the amount that a parent should be expected to contribute toward the support of his child under this part. The scale shall:

(a) include consideration of gross income;

(b) authorize an expense deduction for determining net income;

(c) designate other available resources to be considered;

(d) specify the circumstances which should be considered in reducing support contributions on the basis of hardship.

(2) The department shall accept and compile pertinent and reliable information from any available source in order to establish a minimum scale of suggested contributions. Copies of the scale shall be made available to courts, county offices, county attorneys, and upon request, to any other state or county officer or agency engaged in the administration or enforcement of this part. Attorneys admitted to practice in Montana may have access to the minimum scale of suggested contribution.

(3) No county, court, officer, or agency may be required to use this scale.

History: **En. Sec. 9, Ch. 612, L. 1979.**

40-5-215 through 40-5-220 reserved.

40-5-221. Debt to state by natural or adoptive parents — limitations. (1) Except as provided in subsection (2), any payment of public assistance money made to or for the benefit of any dependent child or children creates a debt due and owing the state of Montana by the responsible parent or parents in an amount equal to the amount of public assistance money so paid. In the case of an adoptive parent or parents, no debt for public assistance paid may accrue prior to the date of adoption.

(2) Where there has been a district court order established, the debt shall be limited to the amount provided for by the order.

(3) Where a child has been placed in foster care, and a written agreement for payment of support has been entered into by the responsible parent or parents and any state agency, the debt shall be limited to the amount provided for in the agreement. However, if a court order for support is or has been entered, the provisions of the order shall prevail over the agreement.

(4) The department shall adopt rules based on ability to pay, with respect to the level of support to be provided for in such agreements or modifications of such agreements based on changed circumstances.

History: **En. Sec. 11, Ch. 612, L. 1979.**

Cross-References

Modification of support, 40-4-208.

Effect of final decree of adoption, 40-8-125.

Parents liable to Department for Aid to Dependent Children payments, 53-4-248.

40-5-222. Support debt based upon subrogation to or assignment of judgment — notice — content — action to collect. (1) The department may issue a notice of a support debt accrued or accruing based upon subrogation to or assignment of the judgment created by a district court order. The notice may be served upon the debtor in the manner prescribed for the service of a summons in a civil action in accordance with the provisions of the Montana Rules of Civil Procedure, demanding payment within 30 days of the date of receipt.

(2) The notice of debt shall include:

(a) a statement of the support debt accrued or accruing, computable on the amount required to be paid under any district court order to which the department is subrogated or has an assigned interest;

(b) a statement that the property of the debtor is subject to collection action;

(c) a statement that the property is subject to distraint and seizure and sale;

(d) a statement that the net proceeds will be applied to the satisfaction of the support debt;

(e) a statement that the debtor is entitled to a fair hearing.

(3) Action to collect the subrogated or assigned support debt by distraint and seizure and sale shall be lawful after 30 days from the date of service upon the debtor or 30 days from the receipt or refusal by the debtor of the notice of debt.

(4) Within 20 days of the date of service of notice of support debt, the debtor may request a fair hearing as provided in 40-5-226.

History: En. Sec. 12, Ch. 612, L. 1979; amd. Sec. 2, Ch. 188, L. 1981; amd. Sec. 41, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 188 added subsections (2)(e) and (4).

Chapter 439 increased 20 days to 30 days in (1) and in (3) in two places.

Cross-References

Process — summons, Rule 4C, M.R.Civ.P. (see Title 25, ch. 20).

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Seizure of person or property, Rule 64, M.R.Civ.P. (see Title 25, ch. 20).

Parents liable to Department for Aid to Dependent Children payments, 53-4-248.

40-5-223. Notice of support liability based upon payment of public assistance — notice — contents — collection warrant — fair hearing. (1) In the absence of a district court order the department may issue a notice of a support liability accrued or accruing based upon payment of public assistance to or for the benefit of any dependent child or children. The notice of liability shall be served upon the responsible parent in the manner prescribed for the service of summons in a civil action, in accordance with the provisions of the Montana Rules of Civil Procedure.

(2) The notice of liability shall include:

(a) a statement of the support debt accrued or accruing, computable on the basis of the amount of public assistance previously paid and to be paid in the future;

(b) a statement of the amount of the monthly public assistance payment;

(c) a statement of the name of the recipient and the name of the child or children for whom assistance is being paid;

(d) a demand for immediate payment of the support debt or, in the alternative, a demand that the responsible parent make answer within 30 days of the date of service to the department stating defenses to liability under 40-5-221;

(e) a statement that if no answer is made on or before 30 days from the date of the service the support debt shall be assessed and determined subject to computation and is subject to collection action;

(f) a statement that the property of the responsible parent will be subject to distraint and seizure and sale.

(3) If no answer is had by the department to the notice of liability on or before 30 days of the date of service, the support debt shall be assessed and determined subject to the computation and the department may issue a warrant for distraint authorizing a collection action under this part.

(4) If the responsible parent, within 30 days of the date of service of notice of liability, makes answer to the department alleging defenses to liability under 40-5-221, the responsible parent may receive a fair hearing pursuant to 40-5-226. The decision of the department in the hearing shall establish the obligation of the responsible parent, if any, for repayment of public assistance funds spent to date as an assessed and determined support debt.

History: En. Sec. 13, Ch. 612, L. 1979; amd. Sec. 42, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendment: Increased 20 days to 30 days wherever it appears; and substituted "the department may issue a warrant for distraint" for "the department shall issue a warrant of distraint" near the end of subsection (3).

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Seizure of person or property, Rule 64, M.R.Civ.P. (see Title 25, ch. 20).

Parents liable to Department for Aid to Dependent Children payments, 53-4-248.

40-5-224. Finding of support liability based upon payment of public assistance — warrant for distraint — bond to release warrant — action to collect. (1) If the department reasonably believes that the parent is not a resident of this state or is about to move from this state or has concealed himself, absconded, absented himself or has removed or is about to remove, secrete, waste, or otherwise dispose of property which could be made subject to collection action to satisfy the support debt, the department may issue a warrant for distraint pursuant to 40-5-241 during the pendency of the fair hearing or thereafter, whether or not appealed. No further action may be taken on the warrant until final determination after fair hearing and/or appeal. The department shall in such cases make and file in the record of the fair hearing an affidavit stating the reasons upon which the belief is founded. The responsible parent may furnish a bond, not to exceed the amount of the support debt, during pendency of the hearing or thereafter, and in such case warrants issued shall be released. If the decision resulting from the hearing is in favor of the responsible parent, all warrants issued shall be released.

(2) The department may commence action under the provisions of this part to collect the support debt on the date of issuance of the decision resulting from the hearing.

History: En. Sec. 14, Ch. 612, L. 1979; amd. Sec. 43, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "warrant for distraint" for "warrant of distraint" in the middle of the first sentence of subsection (1).

Cross-References

Plaintiff's affidavit for obtaining writ, 27-18-202.

Defendant's undertaking to prevent levy, 27-18-301.

40-5-225. Notice and finding of financial responsibility of responsible parent — administrative procedure. (1) In lieu of the procedures provided in 40-5-223 and 40-5-224, the department may, in the absence of a district court order, serve on the responsible parent a notice and finding of financial responsibility requiring a responsible parent to appear and show cause at a hearing held by the department why the finding of liability and the amount of support liability should not be finally ordered. This notice and finding shall relate to the support debt accrued or accruing under this part and/or Title 53, chapter 4, including periodic payments to be made in the future for the period of time any child of the responsible parent is in need. The hearing shall be held pursuant to this part and the rules of the department, which shall provide for a fair hearing.

(2) The notice and finding of financial responsibility shall be served in the same manner prescribed for the service of a summons in a civil action, in accordance with the provisions of the Montana Rules of Civil Procedure. Any responsible parent who objects to all or any part of the notice and finding shall have the right for not more than 30 days from the date of service to request in writing a hearing, notice of which shall be served upon the department personally or by registered or certified mail. If no request is made, the

notice and finding of financial responsibility becomes final. If a request is made, the execution of notice and finding of financial responsibility shall be stayed pending the decision on such hearing or any direct appeal to the courts from the decision.

(3) The notice and finding of financial responsibility shall include:

(a) the amount the department has determined the responsible parent owes, the support debt accrued or accruing, and, as appropriate, the amount to be paid thereon each month, all computable on the basis of the amount of the monthly public assistance payment previously paid or need alleged and the ability of the responsible parent to pay all or any portion of the debt;

(b) a statement of the name of the recipient or custodian and the name of any child for whom assistance is being paid or need is alleged; or a statement of the amount of periodic future support payments for which financial responsibility is found;

(c) a statement that the responsible parent may object to all or any part of the notice and finding and request a hearing to show cause why he should not be determined to be liable for any or all of the past and future debt determined and the amount to be paid thereon;

(d) a statement that if the responsible parent fails to request a hearing, the support debt and payments stated in the notice and finding, including periodic support payments in the future, shall be assessed, determined, and ordered by the department and that this debt is subject to collection action;

(e) a statement that the property of the debtor, without further advance notice or hearing, will be subject to distraint and seizure and sale to satisfy the debt.

History: En. Sec. 15, Ch. 612, L. 1979; amd. Sec. 44, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendment: Increased 20 days to 30 days in the middle of subsection (2).

Cross-References

Hearing — rules of evidence, cross-examination, judicial notice, 2-4-612.

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Seizure of person or property, Rule 64, M.R.Civ.P. (see Title 25, ch. 20).

Parents liable to Department for Aid to Dependent Children payments, 53-4-248.

40-5-226. Administrative hearing — nature — place — time — determinations — failure to appear — entry of findings. (1) The administrative hearing is defined as a "contested case".

(2) The administrative hearing may be held in the county of residence or other county convenient to the responsible parent.

(3) If a hearing is requested, it shall be scheduled within 30 days.

(4) The hearing officer shall determine the liability and responsibility, if any, of the alleged responsible parent under 40-5-221 and shall also determine the amount of periodic payments to be made to satisfy past, present, or future liability under 40-5-221. In making these determinations, the hearing officer shall include in his consideration the scale of suggested minimum contributions adopted under 40-5-214.

(5) If the responsible parent fails to appear at the hearing, upon a showing of valid service, the hearing officer shall enter a decision and order declaring the support debt and payment provisions stated in the notice and finding of financial responsibility to be assessed, determined, and subject to collection

action. Within 30 days of entry of the order, the responsible parent may petition the department to vacate the order upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure.

(6) The hearing officer shall, within 20 days of the hearing, enter findings, conclusions, and a final decision determining liability and responsibility and/or future periodic support payments. The determination of the hearing officer entered pursuant to this section shall be entered as an order unless such findings are set aside pursuant to 40-5-253 and shall limit the support debt under 40-5-221 to the amounts stated in the decision.

(7) The decision establishing liability and future periodic support payments is superseded upon entry of a district court order for support to the extent the district court order is inconsistent with the hearing order or decision. In the absence of a district court order the responsible parent may petition the department for issuance of an order to appear and show cause based on a showing of good cause and material change of circumstances to require the other party to appear and show cause why the decision previously entered should not be prospectively modified. The order to appear and show cause together with a copy of the affidavit upon which the order is based shall be served by the petitioning party on the nonmoving party in the manner of a summons in a civil action. A hearing shall be set not less than 15 or more than 30 days from the date of service, unless extended for good cause shown. Prospective modification may be ordered but only upon a showing of good cause and material change of circumstances.

(8) The department, in its original determinations, and the hearing officer, in making determinations based on objections to original determinations or on petitions to modify, shall consider the standards promulgated for determination of support payments used by the district court of the county of residence of the responsible parent.

(9) Debts determined pursuant to this section, accrued and not paid, are subject to collection action under this part without further necessity of action by the hearing officer.

History: En. Sec. 16, Ch. 612, L. 1979; amd. Sec. 45, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendment: Increased 20 days to 30 days in subsection (5).

Cross-References

Rules for determining residence, 1-1-215.

Contested cases, Title 2, ch. 4, part 6.

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Relief from judgment or order, Rule 60, M.R.Civ.P. (see Title 25, ch. 20).

Child support, 40-4-204.

Modification of support, 40-4-208.

40-5-227. Filing and docketing of final orders — orders effective as district court decrees. (1) An abstract of any final administrative order under this chapter may be filed in the office of the clerk of the district court of any county of Montana. If the administrative order has been entered by nonappearance or default on the part of the responsible parent, the court may reconsider the order on its merits. The order, if approved, must be docketed in the judgment docket of the district court. The properly filed and docketed order has all the force, effect, and attributes of a docketed order or decree of the district court, including but not limited to lien effect and enforceability by supplemental proceedings, writs of execution, and contempt of court proceedings.

(2) A final administrative order that determines and sets periodic support payments in the absence of a district court order, when filed and docketed under this section, may be modified by a district court order only as to installments accruing after any motion for modification. The standard for any such modification is that set forth in 40-4-208.

(3) The department may issue a warrant for distraint based upon a properly filed and docketed order pursuant to 40-5-241.

History: **En. Sec. 1, Ch. 544, L. 1985.**

40-5-228 through 40-5-240 reserved.

40-5-241. Warrant for distraint. Thirty-one days after receipt or refusal of notice of debt under provisions of 40-5-222 or 31 days after service of notice of debt or as otherwise appropriate under the provisions of 40-5-223 and 40-5-224, the department may issue a warrant for distraint based on the amount of the support debt. The warrant is subject to the provisions of 15-1-701, 15-1-704, 15-1-708, and 15-1-709, with references to "tax" taken to mean "support debt" and references to "taxpayer" taken to mean "person owing the support debt", as well as the provisions of this part.

History: **En. Sec. 17, Ch. 612, L. 1979; amd. Sec. 46, Ch. 439, L. 1981; amd. Sec. 2, Ch. 544, L. 1985.**

Compiler's Comments

1985 Amendment: Near middle after "15-1-704", deleted "15-1-705"; and deleted former last sentence that read: "Notwithstanding the provisions of subsection (3) of 15-1-705, an appeal from a hearing may be made directly to district court, as provided in 40-5-253, and is not appealable to the state tax appeal board".

1981 Amendment: Increased 21 days to 31 days in two places in the first sentence; substituted, at the end of the first sentence, "the department may issue a warrant for distraint based on the amount of the support debt" for a provision allowing the department to issue an abstract of a final order. The abstract would be in the form of a warrant and would direct the sheriff to sell the property of the person owing the support debt; added the last two sentences to the section (last sentence deleted by Ch. 544, L. 1985); and deleted former subsections (2) through (4), the text of which may be found in sec. 17, Ch. 612, L. 1979.

40-5-242. Civil liability upon failure to comply with warrant or to honor assignment of wages. Should any person, firm, corporation, association, political subdivision, or department of the state fail or refuse to deliver property pursuant to the order; or after actual notice of filing of a support lien, pay over, release, sell, transfer, or convey real or personal property subject to a support lien to or for the benefit of the debtor or any other person; or fail or refuse to surrender upon demand property distrained under 40-5-241 or fail or refuse to honor an assignment of wages presented by the department, the person, firm, corporation, association, political subdivision, or department of the state is liable to the department in an amount equal to 100% of the value of the debt which is the basis of the distraint or assignment of wages or the value of the distrained property, whichever is less, together with costs, interest, and reasonable attorney fees.

History: **En. Sec. 18, Ch. 612, L. 1979.**

Cross-References

Costs, Title 25, ch. 10.

Debtors of judgment debtor and those holding his property to answer, 25-14-103.

Legal interest, 31-1-106.

Discharge or layoff of employee because of attachment or garnishment prohibited, 39-2-302.

Filing costs and attorneys' fees to be recovered on foreclosure of liens, 71-3-124.

40-5-243. Release of excess to debtor. Whenever any person, firm, corporation, association, political subdivision, or department of the state has in its possession earnings, deposits, accounts, or balances in excess of the amount of the debt claimed by the department plus $100, that person, firm, corporation, association, political subdivision, or department of the state may, without liability under this part, release the excess to the debtor.

History: En. Sec. 19, Ch. 612, L. 1979.

Cross-References

How writ executed — return of excess, 25-13-402.

40-5-244. Banks and savings and loan associations — service effective only as to branch office served. In the case of a bank, bank association, mutual savings bank, or savings and loan association maintaining branch offices, service of any notice or document authorized by this part is only effective as to the accounts, credits, or other personal property of the debtor in the particular branch upon which service is made.

History: En. Sec. 20, Ch. 612, L. 1979.

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

40-5-245. Satisfaction of debt after levy on property — redemption. Any person owning real property or any interest in real property against which a warrant for distraint has been issued and levied upon may pay the amount due, together with expenses of the proceedings and reasonable attorney fees to the department. Upon full payment the property shall be restored to him and all further proceedings on the warrant shall cease. The person shall also have the right within 240 days after sale of property levied upon to redeem the property by making payment to the purchaser in the amount paid by the purchaser plus interest at the statutory interest rate payable on judgments recovered in the courts of this state.

History: En. Sec. 21, Ch. 612, L. 1979; amd. Sec. 47, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "warrant for distraint" for "warrant of distraint" in the middle of the first sentence; and substituted "upon full payment the property shall be restored to him" for "upon full payment the sheriff shall restore the property to him" in the second sentence of the section.

Cross-References

Amount of interest on judgments, 25-9-205.

Redemption, 71-3-116.

Right to redeem, 71-3-117.

Filing costs and attorneys' fees to be recovered on foreclosure of liens, 71-3-124.

40-5-246. Release of distraint and return of seized property — effect. The department may at any time release a distraint on all or part of the property of the debtor or order the return of seized property without liability, if assurance of payment is determined to be adequate by the department or if the action will facilitate the collection of the debt. The release or return does not operate to prevent future action to collect from the same or other property.

History: En. Sec. 23, Ch. 612, L. 1979; amd. Sec. 48, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "order the return of seized property" for "order the sheriff to return seized property" in the middle of the first sentence.

Cross-References
Fees of the sheriff for holding property, 7-32-2142.
Release of debtor by creditor, Title 28, ch. 1, part 16.

40-5-247 through 40-5-250 reserved.

40-5-251. Debt payment schedule. The department may at any time after notice to the debtor set or reset a level and schedule of payments to be paid upon the debt consistent with the income, earning capacity, and resources of the debtor.

History: En. Sec. 22, Ch. 612, L. 1979.

Cross-References
Parents liable to Department for Aid to Dependent Children benefits — schedule of payments, 53-4-248.

40-5-252. Interest on debts due — waiver. Interest on any support debt due and owing to the department at the statutory interest rate payable on judgments recovered in the courts of this state under 40-5-221 may be collected by the department. No provision of this part may be construed to require the department to maintain interest balance due accounts, and interest may be waived by the department, if waiver would facilitate the collection of the debt.

History: En. Sec. 24, Ch. 612, L. 1979.

Cross-References
Interest on judgments, 25-9-205.

40-5-253. Administrative findings and order — judicial review. (1) It is the intent of this part that administrative findings and orders be subject to judicial review but that administrative remedies be exhausted prior to judicial review. The administrative procedures described in this part are subject to review in the appropriate district court. Such review shall be conducted pursuant to the Montana Administrative Procedure Act. Upon a showing by the department that administrative remedies have not been exhausted, the district court shall refuse review until such remedies are exhausted.

(2) Nothing in this part may be construed to abridge or in any way affect the defendant's right to counsel during any and all judicial or administrative proceedings pursuant to this part.

History: En. Sec. 25, Ch. 612, L. 1979.

Cross-References
Right to counsel, Art. II, sec. 24, Mont. Const.
Judicial review of contested cases, Title 2, ch. 4, part 7.

40-5-254. Statutory limitations. Debts ensuing as a result of determinations made through the administrative procedures described in this part are subject to statutory limitations as set forth in Title 27, chapter 2.

History: En. Sec. 26, Ch. 612, L. 1979.

Cross-References
Lien extinguished by Statute of Limitations, 71-3-122.

40-5-255. Charging off child support debts as uncollectible. Any support debt due the department from a responsible parent or former spouse which the department determines uncollectible may be transferred from accounts receivable to a suspense account and cease to be accounted as an asset. In the event a warrant for distraint has been filed and the support debt has subsequently been charged off as uncollectible, the department shall issue a release of lien. At any time after 6 years from the date a support debt was incurred, the department may charge off as uncollectible any support debt upon which the department finds there is no available, practical, or lawful means by which the debt may be collected. No proceedings or action under the provisions of this part may be begun after expiration of the 6-year period to institute collection of a support debt. Nothing herein may be construed to render invalid or nonactionable a warrant for distraint filed with the clerk of court prior to the expiration of the 6-year period or an assignment of earnings executed prior to the expiration of the 6-year period.

History: En. Sec. 27, Ch. 612, L. 1979; amd. Sec. 49, Ch. 439, L. 1981; amd. Sec. 3, Ch. 561, L. 1985.

Compiler's Comments

1985 Amendment: Near beginning of first sentence, after "parent", inserted "or former spouse".

1981 Amendment: Substituted "warrant for distraint" for "warrant of distraint" whenever it appeared.

Cross-References

Lien extinguished by Statute of Limitations, 71-3-122.

40-5-256. Employee debtor rights protected — limitation. No employer may discharge or prejudice an employee for reason that an assignment of earnings has been presented in settlement of a support debt or that a warrant for distraint has been served against the employee's earnings. This provision does not apply if more than three warrants are served upon the same employer within any period of 12 consecutive months.

History: En. Sec. 28, Ch. 612, L. 1979; amd. Sec. 50, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "warrant for distraint" for "warrant of distraint" in the middle of the section.

Cross-References

Discharge or layoff of employee because of attachment or garnishment prohibited, 39-2-302.

Assignments, 40-4-207.

40-5-257. Assignment of earnings to be honored — effect. Any person, firm, corporation, association, political subdivision, or department of the state employing a person owing a support debt or obligation shall honor, according to its terms, a duly executed assignment of earnings, whether executed voluntarily or pursuant to court order, presented by the department as a plan to satisfy or retire a support debt or obligation. This requirement to honor the assignment of earnings and the assignment of earnings itself are applicable whether the earnings are to be paid presently or in the future and continue in force until released in writing by the department. Payment of money pursuant to an assignment of earnings presented by the department serves as full acquittance under any contract of employment. The state shall defend and hold harmless any action taken pursuant to the assignment of earnings. The department shall be released from liability for improper receipt of money under an assignment of earnings upon return of any money so received.

History: En. Sec. 29, Ch. 612, L. 1979.

Cross-References
Discharge or layoff of employee because of attachment or garnishment prohibited, 39-2-302.
Assignments, 40-4-207.

Part 3

Child Support Income Deduction

Part Cross-References
Consumer credit reports — use of child support obligation information, 31-3-127.
Child support, 40-4-204.
Assignments of earnings, 40-4-207.
Child Support Enforcement Act of 1985, Title 40, ch. 5, part 4.
Obligations of parents for the support and education of their children, 40-6-211.

40-5-301. Short title. This part may be cited as the "Child Support Income Deduction Act of 1981".
History: **En. Sec. 1, Ch. 171, L. 1981.**

40-5-302. Purpose. The purpose of this part is to provide a direct method of deducting money from a person's income for the payment of child support if that person has been delinquent in the payment of court-ordered child support.
History: **En. Sec. 2, Ch. 171, L. 1981.**

40-5-303. Petition for income deduction — who may initiate. A petition for an income deduction for the payment of delinquent child support payments may be made by:

(1) the person named as the recipient of the child support payments in the child support order;

(2) the child or the guardian of the child named in the child support order; or

(3) the department of revenue or the department of social and rehabilitation services of the state of Montana.
History: **En. Sec. 3, Ch. 171, L. 1981.**

Cross-References
Representation of child, 40-4-205.
Enforcement of minor's rights, 41-1-202.
Department of Social and Rehabilitation Services — recovery of support payments from parents or guardianship assets, 41-3-1125.

40-5-304. When child support payments considered delinquent. (1) Nonpayment of child support required by any order of a district court or by a similar order of a court of another jurisdiction becomes delinquent under this part when the amount owed is equal to 3 months of child support payments.

(2) Child support payments may be considered delinquent under this part only in reference to a court order setting child support payments.
History: **En. Sec. 4, Ch. 171, L. 1981.**

Cross-References
Payment of maintenance or support to court, 40-4-206.

40-5-305. Notice. On petition for income deductions for payment of delinquent child support, the district court shall cause notice to be served upon the obligor, stating that if the delinquency is not discharged within 15 days, the court will order an income deduction for the payment of the delinquent child support and for the payment of current child support as it becomes due and payable. The notice shall also state that the obligor may contest the allegation that child support payments are delinquent.

History: En. Sec. 5, Ch. 171, L. 1981.

Cross-References

Service by an officer, Title 25, ch. 3, part 2.

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

40-5-306. Discharge of delinquency. If the obligor pays the total amount of child support due and payable within the 15 days specified in 40-5-305, no order for deduction may issue. This discharge of delinquency does not affect or otherwise limit any action as a result of any subsequent delinquencies.

History: En. Sec. 6, Ch. 171, L. 1981.

40-5-307. Delinquency of child support denied — hearing. If the obligor responds to the notice and denies that child support payments are delinquent, the district court shall hold a hearing to determine whether or not there is a deficiency in child support payments sufficient to be delinquent under 40-5-304.

History: En. Sec. 7, Ch. 171, L. 1981.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

40-5-308. Order for deduction from income for child support payments. (1) If the obligor fails to respond to notice within 15 days or if the district court determines that the obligor is delinquent in payment of child support as provided in 40-5-304, the district court shall issue an order to the obligor's employer ordering a deduction from the obligor's wages or salary for the payment of child support.

(2) The order shall state:

(a) the action involved;

(b) the total amount of back child support due and the amount of each court-ordered installment of child support;

(c) the amount to be deducted from the wages or salary of the obligor each pay period and the amount, if any, allowed to the employer under subsection (2) of 40-5-309 as a fee for handling the deduction;

(d) the length of time the order is to remain in effect, if ascertainable; and

(e) to whom the deduction is to be made payable and where it is to be forwarded by the employer.

History: En. Sec. 8, Ch. 171, L. 1981.

Cross-References

Earnings of judgment debtor, 25-13-614.

What property subject to attachment, 27-18-102.

Discharge or layoff of employee because of attachment or garnishment prohibited, 39-2-302.

40-5-309. Amount to be deducted from income. (1) The amount of money to be deducted each pay period from the obligor's income shall be:

(a) (i) the amount of money necessary to pay current installments of child support as they become due and payable; plus

(ii) the amount of money which, when deducted in equal amounts each payday, will pay off all outstanding child support payments delinquent within 2 years; or

(b) the maximum amount allowable by federal garnishment law if the sum provided in subsection (1)(a) exceeds that amount.

(2) The district court may allow a fee of not to exceed $5 per deduction, which the employer may deduct from the obligor's wages or salary for the expense of administering the deduction.

(3) The child support income deduction shall cease when there is no past-due child support owing unless the district court orders continued income deductions for payment of child support installments as they become due and payable.

History: En. Sec. 9, Ch. 171, L. 1981.

Cross-References

Payment of maintenance or support to court, 40-4-206.

40-5-310. Priority of income deduction. An order for the deduction of income for the payment of delinquent child support payments takes precedence over any:

(1) assignment of wages or salary;

(2) voluntary deductions from the obligor's wages or salary; and

(3) other court-ordered garnishment of wages or salary.

History: En. Sec. 10, Ch. 171, L. 1981.

Cross-References

Earnings of judgment debtor, 25-13-614.

What property subject to attachment, 27-18-102.

Wage brokers — restrictions upon assignment of wages or salary, 31-1-304.

Assignments for benefit of creditors, Title 31, ch. 2, part 2.

40-5-311. Remedy not exclusive. The remedy provided in this part for the collection of unpaid child support is not exclusive. This part provides a remedy in addition to all other remedies in law available to obligees of unpaid child support.

History: En. Sec. 11, Ch. 171, L. 1981.

Part 4

Child Support Enforcement Act Administrative Income Withholding

40-5-401. Short title. This part may be cited as the "Child Support Enforcement Act of 1985".

History: En. Sec. 1, Ch. 571, L. 1985.

40-5-402. Purpose. The purpose of this part is to provide a more effective and efficient way to guarantee the support of dependent children by the person or persons primarily responsible for such support by ensuring that the support of children is the highest priority in the allocation of a responsible parent's income.

History: En. Sec. 2, Ch. 571, L. 1985.

40-5-403. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of revenue provided for in 2-15-1301.

(2) "Income" means any form of periodic payment to a person, including earnings and wages. However, income does not include:

(a) any amount required by law to be withheld, other than creditor claims, including federal, state, and local taxes and social security; and

(b) any amounts exempted from judgment, execution, or attachment by federal or state law.

(3) "Obligee" means either a person to whom a duty of support is owed or a public agency of this or another state to which a person has assigned the right to receive current and accrued support payments.

(4) "Obligor" means a person who owes a duty to make payments under a support order.

(5) "Payor" means any payor of income to an obligor on a periodic basis and includes any person, firm, corporation, association, employer, trustee, political subdivision, state agency, or any agent thereof, who is subject to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules of Civil Procedure.

(6) "Support order" means an order of the district court of the state of Montana, an order of a court of appropriate jurisdiction of another state, an administrative order established pursuant to proceedings under part 2 of this chapter, or an order established by administrative hearing process of an agency of another state with functions similar to those of the department set forth in part 2 of this chapter, that provides a set and determinable amount for temporary or final periodic payment of funds for the support of a child. Support order further includes the following:

(a) an order for reimbursement of public assistance money paid by a public agency for the benefit of a minor child;

(b) an order for maintenance to be paid to a former spouse when the former spouse is the custodial parent of a child for whom child support is awarded under the same order; and

(c) an order requiring payment of interest due on unpaid judgments for child support.

History: En. Sec. 3, Ch. 571, L. 1985.

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

40-5-404. Remedies additional to those now existing. The remedy provided in this part is in addition to and not in substitution for any other remedy that may otherwise be available to the department, and the department may simultaneously pursue other remedies to enforce a support obligation or to collect support arrearages.

History: En. Sec. 20, Ch. 571, L. 1985.

40-5-405. Rulemaking authority. The department shall adopt rules and forms to participate in and carry out the provisions of this part.

History: En. Sec. 21, Ch. 571, L. 1985.

40-5-406 through 40-5-410 reserved.

40-5-411. Income withholding. (1) Whenever an obligation for support is being enforced by the department pursuant to Title IV-D of the Social Security Act and the obligation has been established by order of a court or administrative process, income due or to become due within this state to the obligor is subject to withholding procedures under this part.

(2) When the requirements of this part have been met, the department, without necessity for amendment of the support order or further order by a court or other entity, shall issue an order directing the obligor's employer or other payor to withhold and deliver to the department such amount of the obligor's income as will be sufficient to meet the support obligation imposed by the support order and to defray arrearages due when the withholding order takes place.

(3) The provisions for income withholding under this part take precedence over any other law or court order.

History: En. Sec. 4, Ch. 571, L. 1985.

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

40-5-412. Initiation of income withholding procedures. (1) In each case in which the department is enforcing a support order assigned to the state pursuant to 53-2-613 or in which the department is collecting support on behalf of an obligee who has applied for services under 40-5-203, the department shall monitor and track all support payments required by the support order. If at any time these records indicate that the obligor owes any combination of unpaid support equal to or in excess of 1 month's support payment, the department shall commence withholding from the obligor's income.

(2) To accomplish the purpose of subsection (1), the department by written notice to the obligor may direct an obligor who does not owe unpaid child support equal to or in excess of 1 month's support payment to pay all support through the department, notwithstanding any court order directing payments to be made to the obligee or clerk of court.

(3) Whenever an obligation for support is paid through the support enforcement and collections unit of the department, the department must forward payment to the obligee within 10 days of the department's receipt of payment from the obligor.

History: En. Sec. 5, Ch. 571, L. 1985.

40-5-413. Notice of intent to withhold income. (1) Prior to service of an order on the payor to commence income withholding, the department shall serve upon the obligor a notice of the intended withholding action. The notice must contain a statement:

(a) of the amount to be withheld, including a computation showing the period and total amount of the arrearages as of the date of the notice;

(b) that withholding applies to all current and subsequent payors;

(c) of the obligor's right to a hearing under 40-5-414 to contest the implementation of income withholding on the ground that withholding, including the amounts to be withheld, is not proper because of mistake of fact; and

(d) of the period of time within which the obligor must request a hearing and that failure to request the hearing within the time limit will result in income withholding orders being served upon the payor.

(2) The notice must be served upon the obligor personally or by certified mail.

History: En. Sec. 6, Ch. 571, L. 1985.

Cross-References

Certified mail, 1-1-202.

40-5-414. Hearing. (1) The obligor may within 10 days of being served with notice of the intended income withholding under 40-5-413 file with the department a written request for an administrative hearing to be held pursuant to the contested case provisions of Title 2, chapter 4, part 6.

(2) If the obligor requests a hearing within the time allowed, income withholding may not take effect until the conclusion of the hearing or the date of the hearing if the obligor fails to appear at a scheduled hearing.

(3) Venue for the administrative hearing may be in the county where the obligor resides if the obligor resides in this state, the county in which the payor or the payor's agent is located, or the county in which the department or any of its regional offices is located.

(4) The administrative hearing must be held by teleconferencing methods unless the obligor or the department expressly requests an in-person hearing before the hearing examiner.

(5) For purposes of the hearing process, arrearages of support must be computed on the basis of the amount owed and unpaid on the date the obligor was served with the notice of intent to withhold income, and the fact that the obligor may have later paid the arrearage does not remove from the hearing examiner the authority to direct the department to order income withholding.

(6) The obligor within 45 days of service of the notice of intent to withhold income must be informed of the hearing decision on whether income withholding will take place.

History: En. Sec. 7, Ch. 571, L. 1985.

40-5-415. Order to withhold income. (1) If the obligor fails to request a hearing within 10 days or fails to appear at a scheduled hearing or if the hearing examiner determines that the obligor owes a combination of unpaid support equal to or in excess of 1 month's support payment, the department shall immediately serve an order to withhold and deliver income upon any payor or combination of payors. The order must:

(a) direct the payor and successor payors to withhold from the obligor's income each month the amount specified in the order if sufficient funds are available;

(b) direct the payor to deliver the amount withheld to the department in the same month in which the funds were withheld;

(c) state that the order is binding on the payor until further notice by the department; and

(d) state the rights and duties of the payor under this part.

(2) An order to withhold and deliver the obligor's income made under this section is binding upon the payor immediately upon service of the order upon

the payor. Service of the order to withhold may be made either personally or by certified mail.

(3) Whenever there is more than one payor, the department may, in its discretion, apportion the total amount to be withheld each month among payors.

History: **En. Sec. 8, Ch. 571, L. 1985.**

40-5-416. Determination of amount of income to be withheld. (1) Except as provided in subsection (2), the amount of funds to be withheld each month from the obligor's income must be:

(a) the amount of money necessary to pay current installments of support as they become due and payable; plus

(b) the amount of money which, when deducted in equal amounts each month, will pay all outstanding support arrearages and interest, if any, within 2 years; plus

(c) a fee not to exceed $5 each month, which may be withheld by the payor as compensation for the administrative costs of each withholding.

(2) The maximum amounts withheld from the obligor's wages or salaries may not exceed the maximum amount permitted under section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. 1673(b).

(3) At any time, if the obligor can show that substantial hardship will result if the maximum permissible withholding is implemented or continued, the department for cause shown may in its discretion determine a lesser amount to be withheld each month in satisfaction of support arrearages.

History: **En. Sec. 9, Ch. 571, L. 1985.**

Cross-References

Earnings of judgment debtor — exemptions, 25-13-614.

40-5-417. Modification or termination of withholding orders. (1) The department may at any time modify the order to withhold income to:

(a) reflect payment in full of the arrearages by income withholding or otherwise;

(b) recognize an increase or decrease in the support order; or

(c) indicate any other reason the amount to be withheld is to be reduced or changed.

(2) An income withholding order terminates only when the department is no longer authorized under the law to collect support or, when appropriate, services rendered under 40-5-203 have come to an end or when the obligation to pay support is terminated and all arrearages are paid in full, whichever occurs first.

History: **En. Sec. 14, Ch. 571, L. 1985.**

40-5-418. Payment records. (1) The department, in collecting, disbursing, or receiving payments pursuant to orders to withhold income, shall maintain complete, accurate, and clear records of all payments and disbursements.

(2) Certified payment records maintained by the department must, without further proof or foundation, be admitted into evidence in any legal proceedings under this part. Such records constitute prima facie evidence of the amount of support paid and arrearages that have accrued since the department began to monitor support payment in a case.

History: **En. Sec. 15, Ch. 571, L. 1985.**

40-5-419 and 40-5-420 reserved.

40-5-421. Duties of payor. (1) A payor who has been served with an order to withhold and deliver income shall deduct the amount designated in the order beginning not later than the first pay period that occurs after 14 days from the service of the order. The payor shall promptly deliver the amount withheld to the department as directed by the order or in accordance with any subsequent modification of the order received from the department.

(2) If the obligor's pay periods are at intervals of less than 1 month, the payor may withhold an equal amount at each pay period cumulatively sufficient to pay the monthly withholding as directed by the withholding order.

(3) Whenever the payor is obligated to withhold income for more than one obligor, the payor may combine all amounts withheld into a single payment for that month with the portion thereof which is attributable to each obligor separately designated.

(4) Whenever there is more than one order for withholding against a single obligor, the payor must comply with the orders in the sequence in which they were served upon the payor and must honor all withholding orders to the extent that the total amount withheld from the obligor's wages or salary does not exceed the limits set in 40-5-416.

(5) The payor must promptly notify the department of the termination of the obligor's employment or other source of income and provide the obligor's last-known address and the name and address of the obligor's new employer or other source of income, if known to the payor.

History: En. Sec. 10, Ch. 571, L. 1985.

40-5-422. Obligor rights protected. No employer may discharge, discipline, or refuse to hire an obligor because of the institution of income withholding on the obligor's income or the initiation of proceedings under this part. Any person who violates this section may be fined not more than $500 and not less than $150 and may be required to make full restitution to the aggrieved obligor, including reinstatement and backpay.

History: En. Sec. 12, Ch. 571, L. 1985.

40-5-423. Priority of income withholding. An order to withhold and deliver income under this part takes priority over any:

(1) wage or income deduction order under any other state law;
(2) voluntary or involuntary assignment of wages;
(3) other voluntary deductions from the obligor's income;
(4) levies, writs of execution, or garnishments of the obligor's income; and
(5) any other claims by creditors.

History: En. Sec. 13, Ch. 571, L. 1985.

Cross-References

Entry of judgment and satisfaction — lien, Title 25, ch. 9, part 3.

Execution of judgment, Title 25, ch. 13.

Rules of priority — perfected and unperfected security interests, Title 30, ch. 9, part 3.

Priority in cases of execution or attachment, 71-3-303.

40-5-424. Civil liability for failure to comply with income withholding order. (1) A payor who fails to withhold and deliver support money from the obligor's income when ordered to do so under 40-5-415 is liable to the department for any amount up to the accumulated amount the payor should have withheld and delivered.

(2) No payor who complies with an order to withhold under this part is liable for wrongful withholding to the obligor or to any other person claiming rights derived from the obligor.

History: En. Sec. 11, Ch. 571, L. 1985.

Cross-References

Damages — measure of damages, Title 27, ch. 1, parts 2 and 3.

40-5-425 through 40-5-430 reserved.

40-5-431. Registration of interstate income withholding orders. (1) Whenever an obligor, whether or not he resides in this state, derives income within this state and an order for income withholding of the obligor's income has been issued by a public agency of another state as a means to enforce support orders under Title IV-D of the Social Security Act, that agency may register the income withholding order with the department. Upon registration of the foreign withholding order, it must be treated in the same manner and have the same effect as an income withholding order issued by the department.

(2) The application for registration of a foreign order for income withholding must include:

(a) a certified copy of the support order, with all modifications thereof;

(b) a certified copy of the income withholding order;

(c) a sworn statement of the facts entitling the agency to issue an income withholding order, including a statement of the amount of arrearages and a statement that all procedural due process requirements of the foreign jurisdiction for issuance of such income withholding order have been carried out in full;

(d) the name, address, and social security number of the obligor;

(e) the name and address of the obligor's employer or of any other payor of income to the obligor if the order for income withholding of the foreign jurisdiction extends to such other income; and

(f) the name and address of the agency or person to whom support payments collected by the department under income withholding procedures should be transmitted.

(3) When the foreign income withholding order is registered, the department shall serve the order upon the payor, with directions to the payor to comply with the order and to deliver the withheld amounts to the department.

History: En. Sec. 16, Ch. 571, L. 1985.

40-5-432. Application for interstate withholding. (1) Whenever an obligor resides in this state and derives income within this state and a support order issued in another jurisdiction is being enforced by a public agency of that jurisdiction pursuant to Title IV-D of the Social Security Act, that agency may apply to the department for income withholding services.

(2) The application for interstate income withholding must include:

(a) a certified copy of the support order, with all modification thereof;

(b) an affidavit by the obligee containing a statement that the obligor is delinquent in the payment of support in an amount equal to at least 1 month's support payment and a computation of the period and total amount of the arrearage as of the date of the application;

(c) a certified copy of the payment record if such records are maintained by the agency or any other agency within that jurisdiction;

(d) the name, address, and social security number of the obligor;

(e) the name and address of all known payors within this state; and

(f) the name and address of the agency or person to whom support payments collected by the department under income withholding procedures should be sent.

(3) Upon receipt of the application, the department shall commence procedures to establish orders for income withholding, including notice and opportunity for hearing under this part. The department shall further advise the obligor that the income withholding was requested on the basis of an application from another jurisdiction.

(4) In any hearing based on an application under this section, the certified copy of the support order and affidavit, without further proof or foundation, constitutes prima facie evidence that the support order is valid and that the obligee or public agency is entitled to an order of income withholding and that the amount of current support payments and arrearages are as stated.

(5) In accordance with 40-5-414, a final decision on whether or not income withholding is appropriate must be rendered within 45 days of service of notice on the obligor. If, however, because of the interstate aspects of the case, the hearing examiner is unable to resolve a dispute over the amount of arrearages within such time and the hearing examiner has found that the obligor is delinquent in an amount equal to at least 1 month's support payment, the hearing examiner shall authorize immediate service of the order for withholding as to current support and may continue the hearing on the disputed amounts beyond the 45-day limit.

History: En. Sec. 17, Ch. 571, L. 1985.

40-5-433. Additional duties of department in interstate income withholding. (1) Unless the public agency of the foreign jurisdiction makes application to the department for additional services, the department is not required to locate the obligor or to locate payors of income to the obligor. If the application for interstate service provided for in 40-5-431 and 40-5-432 fails to provide this information or the information is determined to be incorrect, the department may return the application without further proceeding under this part.

(2) If the department determines that the obligor is no longer employed in this state or no longer derives income within this state, the department shall promptly notify the agency which requested income withholding of the changes and shall forward to that agency all information it has with respect to the obligor's new address and the name and address of the obligor's new employer or other source of income.

(3) The department shall promptly transmit payments received on an income withholding order to the agency or person designated in the interstate application.

History: En. Sec. 18, Ch. 571, L. 1985.

40-5-434. Initiation of income withholding in other jurisdictions. Whenever the department is authorized or required under the laws of this state to enforce and collect on a support order and the obligor is employed or has a source of income in another state, the department shall request the agency responsible for income withholding in that state to implement income withholding procedures. The department shall compile and transmit to the withholding agency of the other state all documentation required by the law of that state necessary for the purpose of obtaining an income withholding order in that state. The department shall also transmit to the withholding agency a certified copy of any subsequent modification of the support order.

History: En. Sec. 19, Ch. 571, L. 1985.

CHAPTER 6

PARENT AND CHILD

Part 1 — Uniform Parentage Act

Section
40-6-101. Short title.
40-6-102. Parent and child relationship defined.
40-6-103. Relationship not dependent on marriage.
40-6-104. How parent and child relationship established.
40-6-105. Presumption of paternity.
40-6-106. Artificial insemination.
40-6-107. Determination of father and child relationship — who may bring action.
40-6-108. Statute of limitations.
40-6-109. Jurisdiction — venue.
40-6-110. Parties.
40-6-111. Pretrial proceedings.
40-6-112. Blood tests.
40-6-113. Evidence relating to paternity.
40-6-114. Pretrial recommendations.
40-6-115. Civil action.
40-6-116. Judgment or order.
40-6-117. Enforcement of judgment or order.
40-6-118. Modification of judgment or order.
40-6-119. Rights to counsel — free transcript on appeal.
40-6-120. Hearings and records — confidentiality.
40-6-121. Action to declare mother and child relationship.
40-6-122. Promise to render support.
40-6-123. Birth records.
40-6-124. Repealed.
40-6-125. Children born out of wedlock — relinquishment — consent.
40-6-126. Notice of intent to claim paternity.
40-6-127. Expected child — intent to release or consent — petition and notice.
40-6-128. Proceeding to determine father's identity and terminate rights.
40-6-129. Grounds for termination of father's rights.
40-6-130. Best interests of the child — custody to father — legitimation.
40-6-131. Uniformity of application and construction.
40-6-132. Repealed.
40-6-133. Repealed.
40-6-134. Repealed.
40-6-135. Relinquishment of parental rights — form, execution, and revocation.

Part 2 — Obligations of Parents

40-6-201. Legitimacy of children born in wedlock.

40-6-202. Legitimacy of children born after dissolution of marriage.
40-6-203. Child legitimatized by marriage of parents.
40-6-204 through 40-6-210 reserved.
40-6-211. Obligations of parents for the support and education of their children.
40-6-212. Allowance to parent.
40-6-213. Remedy when parent dies without providing for support of child.
40-6-214. Reciprocal duties of parents and children in maintaining each other.
40-6-215. When parent liable for necessaries supplied to child.
40-6-216. When parent not liable for support furnished child.
40-6-217. Married person not bound for support of spouse's children by former marriage.
40-6-218. Compensation and support of person after attaining majority.
40-6-219 and 40-6-220 reserved.
40-6-221. Custody, services, and earnings of child.
40-6-222. Custody of children where husband and wife living separate.
40-6-223. When parent may bring action for the exclusive control of children — decree.
40-6-224. When custody may be awarded without dissolution proceedings.
40-6-225 through 40-6-230 reserved.
40-6-231. Right of parent to determine the residence of child.
40-6-232. Parental control over property of child.
40-6-233. Remedy for parental abuse.
40-6-234. When parental authority ceases.
40-6-235. Parent may relinquish services and custody of child.
40-6-236. Wages of minors.
40-6-237. Destruction of property by minor — liability of parents.
40-6-238. Limitation on amount of recovery.

Part 3 — Obligations of Children

40-6-301. Duty of child to support indigent parents.
40-6-302. Failure to support — misdemeanor.
40-6-303. Civil action to enforce duty to support.

Chapter Cross-References

Tax provisions relating to families, 7-6-4405, 7-6-4408, 7-16-4105, 7-21-2203 through 7-21-2210, 15-6-201 through 15-6-208, 15-7-307, 15-30-112, 15-30-113, 15-30-134.

Person's residence presumed to be that of his family for voting purposes, 13-1-112.

Beneficiaries under PERS, 19-3-1301, 19-3-1302.

Civil procedure provisions relating to family matters, 25-9-102, 27-19-306, 70-19-102, 70-27-111, 70-31-201.

Execution of judgments when family property and interest involved, Title 25, ch. 13.

Montana Rules of Civil Procedure relating to marriage, children, and family, Rules 4D(2)(b), 4D(2)(c), 4D(5)(a)(iii), 20(a), 27(a)(2), M.R.Civ.P. (see Title 25, ch. 20).

Evidence rules relating to marriage, children, and family, 26-1-601, 26-1-602, 26-1-802.

Parent or guardian may sue for injury or death of child or ward, 27-1-323, 27-1-512, 27-1-513.

When action not abated by death or other disability, 27-1-501, 27-1-511, 27-1-512.

U.C.C. provisions relating to families, 30-2-318, 30-9-109, 30-9-307.

Payment of unemployment compensation, 39-51-102, 39-51-201 through 39-51-206, 39-51-601, 39-51-2103, 39-51-2105, 39-51-2106, 39-51-2201, 39-51-2204, 39-51-2205, 39-51-2301 through 39-51-2308.

Workers' compensation law relating to families, Title 39, ch. 71, part 1; 39-71-104, 39-71-602, 39-71-723, 39-71-737, 39-71-741, 39-71-742, 39-71-2203.

Rights of children, Title 41, ch. 1.

Child labor, Title 41, ch. 2.

General criminal provisions relating to family, 45-1-205, 45-2-101, 45-2-211.

Justifiable use of force with respect to children, 45-3-107.

Offenses against the person of a family member, 45-5-304, 45-5-507, 45-5-511, 45-5-602 through 45-5-604, 45-5-611, 45-5-612, 45-5-621 through 45-5-624, 50-20-104, 50-20-106 through 50-20-108.

Offenses against public order by family members, 45-8-113, 45-8-344.

Criminal procedure provisions relating to family members, 46-3-204, 46-16-212, 46-23-1022, 46-23-1102, 61-12-703.

Diagnostic tests for pregnant women and newborn infants, Title 50, ch. 19.

Payments for care of persons at institutions, Title 53, ch. 1, part 4.

General welfare provisions relating to family, 53-2-101, 53-2-201, 53-2-206, 53-2-610, 53-2-611; Title 53, ch. 3.

Aid to Dependent Children, Title 53, ch. 4, part 2.
Day-care facilities, Title 53, ch. 4, part 5.
Automobile registration may be transferred to surviving heir without letters of administration, 61-3-201.
Child safety restraint systems, 61-9-420.
Distribution of estate property, Title 72.
Uniform Transfers to Minors Act, Title 72, ch. 26.
Housing Law of 1975, Title 90, ch. 6.

Part 1

Uniform Parentage Act

40-6-101. Short title. This part may be cited as the "Uniform Parentage Act".

History: En. 61-301 by Sec. 1, Ch. 512, L. 1975; R.C.M. 1947, 61-301.

40-6-102. Parent and child relationship defined. As used in this part, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

History: En. 61-302 by Sec. 2, Ch. 512, L. 1975; R.C.M. 1947, 61-302.

Cross-References

Effect of final decree of adoption, 40-8-125.

40-6-103. Relationship not dependent on marriage. The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

History: En. 61-303 by Sec. 3, Ch. 512, L. 1975; R.C.M. 1947, 61-303.

40-6-104. How parent and child relationship established. The parent and child relationship between a child and:

(1) the natural mother may be established by proof of her having given birth to the child or under this part;

(2) the natural father may be established under this part;

(3) an adoptive parent may be established by proof of adoption.

History: En. 61-304 by Sec. 4, Ch. 512, L. 1975; R.C.M. 1947, 61-304.

Cross-References

Effect of final decree of adoption, 40-8-125.
Certificate of adoption, 50-15-303.

40-6-105. Presumption of paternity. (1) A man is presumed to be the natural father of a child if:

(a) he and the child's natural mother are or have been married to each other and the child is born during the marriage or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce or after a decree of separation is entered by a court;

(b) before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(i) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce; or

(ii) if the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation;

(c) after the child's birth, he and the child's natural mother have married or attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(i) he has acknowledged his paternity of the child in writing filed with the department of health and environmental sciences or with the district court for the county where he resides; or

(ii) with his consent, he is named as the child's father on the child's birth certificate; or

(iii) he is obligated to support the child under a written voluntary promise or by court order;

(d) while the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child; or

(e) he acknowledges his paternity of the child in a writing filed with the department of health and environmental sciences or with the district court of the county where he resides, which court or department shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the department of health and environmental sciences or with the district court of the county where the acknowledgment was filed. If another man is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted.

(2) A presumption under this section may be rebutted in an appropriate action by a preponderance of the evidence.

History: En. 61-305 by Sec. 5, Ch. 512, L. 1975; R.C.M. 1947, 61-305.

Cross-References

Paternity, 40-5-128.

Legitimacy of children born in wedlock, 40-6-201.

Legitimacy of children born after dissolution of marriage, 40-6-202.

Child legitimized by marriage of parents, 40-6-203.

Birth certificates, Title 50, ch. 15, part 2.

40-6-106. Artificial insemination. (1) If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of a child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination and file the husband's consent with the department of health and environmental sciences, where it shall be kept confidential and in a sealed file. However, the physician's failure to do so does not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

(2) The donor of semen provided to a licensed physician for use in artificial insemination of a married woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived.

History: En. 61-306 by Sec. 6, Ch. 512, L. 1975; R.C.M. 1947, 61-306.

Cross-References

Legitimacy of children born in wedlock, 40-6-201.

Vital statistics — duties of Department, 50-15-103.

Inspection of records and issuance of copies limited, 50-15-112.

40-6-107. Determination of father and child relationship — who may bring action. (1) Any interested party may bring an action for the purpose of determining the existence or nonexistence of the father and child relationship presumed pursuant to 40-6-105.

(2) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under 40-6-105 may be brought by the child, the mother or personal representative of the child, the department of social and rehabilitation services or its appropriate local affiliate, the personal representative or a parent of the mother if the mother has died, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.

(3) Regardless of its terms, an agreement, other than an agreement approved by the court in accordance with 40-6-114(2), between an alleged or presumed father and the mother or child does not bar an action under this section.

(4) If an action under this section is brought before the birth of the child, all proceedings shall be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony.

History: En. 61-307 by Sec. 7, Ch. 512, L. 1975; R.C.M. 1947, 61-307.

Cross-References

Depositions, Rule 27, M.R.Civ.P. (see Title 25, ch. 20).

Paternity, 40-5-128.

Unborn children, 41-1-103.

Enforcement of minor's rights, 41-1-202.

Personal representative, Title 72, ch. 12, part 5.

40-6-108. Statute of limitations. (1) An action may be commenced:

(a) at any time for the purpose of declaring the existence of the father and child relationship presumed under subsection (a), (b), or (c) of 40-6-105(1);

(b) for the purpose of declaring the nonexistence of the father and child relationship presumed under subsection (a), (b), or (c) of 40-6-105(1), only if the action is brought within a reasonable time after obtaining knowledge of relevant facts, but not later than 5 years after the child's birth.

(2) After the presumption has been rebutted, paternity of the child by another man may be determined in the same action if he has been made a party.

(3) An action to determine the existence or nonexistence of the father and child relationship as to a child who has no presumed father under 40-6-105 may not be brought:

(a) by the child later than 2 years after the child attains the age of majority; or

(b) by a state agency later than 2 years after the first application is made under Title IV-D of the Social Security Act for services to the child.

(4) Sections 40-6-107 and 40-6-108 do not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship or otherwise.

(5) After the conclusion of an adoption proceeding under chapter 8, Title 40, no further action to declare the existence or nonexistence of the father and child relationship of the adopted child may be commenced, except as provided in 40-8-112.

History: En. 61-308 by Sec. 8, Ch. 512, L. 1975; R.C.M. 1947, 61-308; amd. Sec. 5, Ch. 33, L. 1979; amd. Sec. 1, Ch. 442, L. 1985.

Compiler's Comments

1985 Amendment: In (3)(a) substituted present language for "later than 3 years after the birth of the child"; and inserted (3)(b).

Cross-References

Adult rights, Art. II, sec. 14, Mont. Const.

When person entitled to bring action is under a disability, 27-2-401.

Minors and adults defined, 41-1-101.

40-6-109. Jurisdiction — venue. (1) The district court has jurisdiction of an action brought under this part. The action may be joined with an action for dissolution, annulment, separate maintenance, support, or adoption.

(2) For purposes of an action brought under this part, personal jurisdiction is established in the courts of this state over any person who has had sexual intercourse in this state which has resulted in the birth of a child who is the subject of such proceedings. In addition to any other method provided by rule or statute, personal jurisdiction may be acquired by service in accordance with Rule 4B of the Montana Rules of Civil Procedure.

(3) The action may be brought in the county in which the child or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced.

History: En. 61-309 by Sec. 9, Ch. 512, L. 1975; amd. Sec. 21, Ch. 33, L. 1977; R.C.M. 1947, 61-309.

Cross-References

Residence — rules for determining, 1-1-215.

Venue in probate proceedings, 72-1-203.

40-6-110. Parties. The child shall be made a party to the action. If he is a minor, he shall be represented by his general guardian or a guardian ad litem appointed by the court. The child's mother or father may not represent the child as guardian or otherwise. The court may appoint the department of social and rehabilitation services or the appropriate county welfare department as guardian ad litem for the child. The natural mother, each man presumed to be the father under 40-6-105, and each man alleged to be the natural father shall be made parties or, if not subject to the jurisdiction of the court, shall be given notice of the action in a manner prescribed by the court and an opportunity to be heard. The court may align the parties.

History: En. 61-310 by Sec. 10, Ch. 512, L. 1975; R.C.M. 1947, 61-310.

Cross-References

Jurisdiction of persons, Rule 4B, M.R.Civ.P. (see Title 25, ch. 20).

Infants or incompetent persons as parties, Rule 17(c), M.R.Civ.P. (see Title 25, ch. 20).

Joinder of persons needed for just adjudication, Rule 19, M.R.Civ.P. (see Title 25, ch. 20).

Enforcement of minor's rights, 41-1-202.

Appointment of guardian ad litem, 41-5-512.

40-6-111. Pretrial proceedings. (1) As soon as practicable after an action to declare the existence or nonexistence of the father and child relationship has been brought, an informal hearing shall be held. The court may order that the hearing be held before a referee. The public shall be barred from the hearing. A record of the proceeding shall be kept.

(2) Upon refusal of any witness, including a party, to testify under oath or produce evidence, the court may order him to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground that his testimony or evidence might tend to incriminate him, the court may grant him immunity from all criminal liability on account of the testimony or evidence he is required to produce. An order granting immunity bars prosecution of the witness for any offense shown in whole or in part by testimony or evidence he is required to produce, except for perjury committed in his testimony. The refusal of a witness who has been granted immunity to obey an order to testify or produce evidence is a civil contempt of the court.

History: En. 61-311 by Sec. 11, Ch. 512, L. 1975; R.C.M. 1947, 61-311.

Cross-References

Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

Subpoenas and enforcement — compelling testimony, 2-4-104.

Sittings of court — when private, 3-1-313.

Contempts, Title 3, ch. 1, part 5.

Perjury, 45-7-201.

40-6-112. Blood tests. (1) The court may, and upon request of a party shall, require the child, mother, or alleged father to submit to blood tests. The tests shall be performed by an expert qualified as an examiner of blood types, appointed by the court.

(2) The court, upon reasonable request by a party, shall order that independent tests be performed by other experts qualified as examiners of blood types.

(3) In all cases the court shall determine the number and qualifications of the experts.

History: En. 61-312 by Sec. 12, Ch. 512, L. 1975; R.C.M. 1947, 61-312.

Cross-References

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Opinions and expert testimony, Art. VII, Montana Rules of Evidence (see Title 26, ch. 10).

40-6-113. Evidence relating to paternity. Evidence relating to paternity may include:

(1) evidence of sexual intercourse between the mother and alleged father at any possible time of conception;

(2) an expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;

(3) blood test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity;

(4) medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and

(5) all other evidence relevant to the issue of paternity of the child.

History: En. 61-313 by Sec. 13, Ch. 512, L. 1975; R.C.M. 1947, 61-313.

Cross-References

Basis of opinion testimony by experts, Rule 703, Montana Rules of Evidence (see Title 26, ch. 10).

Opinions on ultimate issue, Rule 704, Montana Rules of Evidence (see Title 26, ch. 10).

Paternity, 40-5-128.

40-6-114. Pretrial recommendations. (1) On the basis of the information produced at the pretrial hearing, the judge or referee conducting the hearing shall evaluate the probability of determining the existence or nonexistence of the father and child relationship in a trial and whether a judicial declaration of the relationship would be in the best interest of the child. On the basis of the evaluation, an appropriate recommendation for settlement shall be made to the parties, which may include any of the following:

(a) that the action be dismissed with or without prejudice;

(b) that the matter be compromised by an agreement among the alleged father, the mother, and the child, in which the father and child relationship is not determined but in which a defined economic obligation is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother, subject to approval by the judge or referee conducting the hearing. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the judge or referee conducting the hearing shall consider the best interest of the child in the light of the factors enumerated in 40-6-116(5), discounted by the improbability, as it appears to him, of establishing the alleged father's paternity or nonpaternity of the child in a trial of the action. In the best interest of the child, the court may order that the alleged father's identity be kept confidential. In that case, the court may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on him; and

(c) that the alleged father voluntarily acknowledge his paternity of the child.

(2) If the parties accept a recommendation made in accordance with subsection (1), judgment shall be entered accordingly.

(3) If a party refuses to accept a recommendation made under subsection (1) and blood tests have not been taken, the court shall require the parties to submit to blood tests, if practicable. Thereafter the judge or referee shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial.

(4) If the scientific evidence resulting from the blood tests conclusively shows that the defendant could not have been the father, then the instant action shall be dismissed.

(5) The guardian ad litem may accept or refuse to accept a recommendation under this section.

(6) The informal hearing may be terminated and the action set for trial if the judge or referee conducting the hearing finds unlikely that all parties would accept a recommendation he might make under subsection (1) or (3).

History: En. 61-314 by Sec. 14, Ch. 512, L. 1975; R.C.M. 1947, 61-314.

Cross-References

Guardian ad litem, 25-5-301.

Pretrial procedure — formulating issues, Rule 16, M.R.Civ.P. (see Title 25, ch. 20).

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Best interests of child, 40-4-212.

40-6-115. Civil action. (1) An action under this part is a civil action governed by the rules of civil procedure. The mother of the child and the alleged father are competent to testify and may be compelled to testify. Sections 40-6-111(2), 40-6-112, and 40-6-113 apply to all actions brought under this part.

(2) Testimony relating to sexual access to the mother by an unidentified man at any time or by an identified man at a time other than the probable time of conception of the child is inadmissible in evidence, unless offered by the mother.

(3) In an action against an alleged father, evidence offered by him with respect to a man who is not subject to the jurisdiction of the court concerning his sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if the alleged father has undergone and made available to the court blood tests, the results of which do not exclude the possibility of his paternity of the child. A man who is identified and is subject to the jurisdiction of the court shall be made a defendant in the action.

History: En. 61-315 by Sec. 15, Ch. 512, L. 1975; R.C.M. 1947, 61-315.

Cross-References

Joinder of persons needed for just adjudication, Rule 19, M.R.Civ.P. (see Title 25, ch. 20).

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Entry of judgment, Rule 58, M.R.Civ.P. (see Title 25, ch. 20).

40-6-116. Judgment or order. (1) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a substitute birth certificate be issued under 40-6-123.

(3) The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(4) Support judgments or orders ordinarily shall be for periodic payments which may vary in amount. In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support. The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court deems just.

(5) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

(a) the needs of the child;

(b) the standard of living and circumstances of the parents;

(c) the relative financial means of the parents;

(d) the earning ability of the parents;

(e) the need and capacity of the child for education, including higher education;

(f) the age of the child;

(g) the financial resources and the earning ability of the child;

(h) the responsibility of the parents for the support of others; and

(i) the value of services contributed by the custodial parent.

History: En. 61-316 by Sec. 16, Ch. 512, L. 1975; R.C.M. 1947, 61-316.

Cross-References

Entry of judgment, Rule 58, M.R.Civ.P. (see Title 25, ch. 20).

Necessity determined by standard of living, 40-2-210.

Child support, 40-4-204.

Best interest of child, 40-4-212.

Visitation, 40-4-217.

Obligations of parents for the support and education of their children, 40-6-211.

Custody, services, and earnings of child, 40-6-221.

New birth certificate upon proof of legitimation, 50-15-207.

40-6-117. Enforcement of judgment or order. (1) If existence of the father and child relationship is declared or paternity or a duty of support has been acknowledged or adjudicated under this part or under prior law, the court may order support payments to be made to the mother, the clerk of the court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court.

(2) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.

History: En. 61-318 by Sec. 18, Ch. 512, L. 1975; R.C.M. 1947, 61-318.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Judgments — method of enforcement, Title 25, ch. 13, part 2.

Enforcement of order to pay money, 25-13-204.

Remedies, Title 27.

Payment of maintenance or support to court, 40-4-206.

Paternity, 40-5-128.

40-6-118. Modification of judgment or order. The court has continuing jurisdiction to modify or revoke a judgment or order:

(1) for future education and support; and

(2) with respect to matters listed in 40-6-116(3), 40-6-116(4), and 40-6-117(2), except that a court entering a judgment or order for the payment of a lump sum or the purchase of an annuity under 40-6-116(4) may specify that the judgment or order may not be modified or revoked.

History: En. 61-319 by Sec. 19, Ch. 512, L. 1975; R.C.M. 1947, 61-319.

Cross-References

Child support, 40-4-204.

Modification and termination of provisions for maintenance, support, and property disposition, 40-4-208.

Obligations of parents for the support and education of their children, 40-6-211.

40-6-119. Rights to counsel — free transcript on appeal. (1) At the pretrial hearing and in further proceedings, any party may be represented by counsel. The court shall appoint counsel for a party who is financially unable to obtain counsel.

(2) If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal.

History: En. 61-320 by Sec. 20, Ch. 512, L. 1975; R.C.M. 1947, 61-320.

Cross-References

Right to counsel, Art. II, sec. 24, Mont. Const.

Copies of proceedings, 3-5-604.

40-6-120. Hearings and records — confidentiality. Notwithstanding any other law concerning public hearings and records, any hearing or trial held under this part shall be held in closed court without admittance of any person other than those necessary to the action or proceeding. All papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in any agency of the state or of any political subdivision or elsewhere, are subject to inspection only upon consent of the court and all interested persons or in exceptional cases only upon an order of the court for good cause shown.

History: **En. 61-321 by Sec. 21, Ch. 512, L. 1975; R.C.M. 1947, 61-321.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Sittings of court — when private, 3-1-313.

40-6-121. Action to declare mother and child relationship. Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of this part applicable to the father and child relationship apply.

History: **En. 61-322 by Sec. 22, Ch. 512, L. 1975; R.C.M. 1947, 61-322.**

40-6-122. Promise to render support. (1) Any promise in writing to furnish support for a child growing out of a supposed or alleged father and child relationship does not require consideration and is enforceable according to its terms, subject to 40-6-107(4).

(2) In the best interest of the child or the mother, the court may, and upon the promisor's request shall, order the promise to be kept in confidence and designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the promise.

History: **En. 61-323 by Sec. 23, Ch. 512, L. 1975; amd. Sec. 22, Ch. 33, L. 1977; R.C.M. 1947, 61-323.**

Cross-References

Contracts which violate policy of the law — exemption from responsibility, 28-2-702.

Restraints upon legal proceedings void, 28-2-708.

Consideration, Title 28, ch. 2, part 8.

Best interest of child, 40-4-212.

40-6-123. Birth records. (1) Upon order of a court of this state or upon request of a court of another state, the department of health and environmental sciences shall prepare a substitute certificate of birth consistent with the findings of the court and shall substitute the new certificate for the original certificate of birth.

(2) The fact that the father and child relationship was declared after the child's birth shall not be ascertainable from the new certificate but the actual place and date of birth shall be shown.

(3) The evidence upon which the new certificate was made and the original birth certificate shall be kept in a sealed and confidential file and shall be subject to inspection only upon consent of the court and all interested persons or in exceptional cases only upon an order of the court for good cause shown.

History: **En. 61-324 by Sec. 24, Ch. 512, L. 1975; R.C.M. 1947, 61-324.**

Cross-References

Child of unknown parentage, 50-15-203.

Delayed or amended birth certificate, 50-15-204.

Establishment of date and place of birth when certificate cannot be obtained, 50-15-205.

Permissible disclosure of illegitimate birth, 50-15-206.

New birth certificate upon proof of legitimation, 50-15-207.

40-6-124. Repealed. Sec. 15, Ch. 530, L. 1981.

History: **En. 61-328 by Sec. 1, Ch. 422, L. 1977; R.C.M. 1947, 61-328.**

40-6-125. Children born out of wedlock — relinquishment — consent. (1) If the mother of a child born out of wedlock proposes to relinquish the child for adoption and the relinquishment or consent of the birth father cannot be obtained, the child may not be placed for adoption until the parental rights of the father are terminated by the court as provided in this part, by the court pursuant to Title 41, chapter 3, or by a court of competent jurisdiction in another state or country.

(2) Pending the termination or other disposition of the rights of the father of the child born out of wedlock, the mother may execute a relinquishment terminating her rights to the child. If the mother relinquishes the child, the agency of the state of Montana or the licensed adoption agency to whom the child is relinquished may file a petition under this part or a petition of dependency or neglect pursuant to Title 41, chapter 3. Pending disposition of the petition, the court may enter an order authorizing temporary care of the child.

(3) At the request of the mother, her execution of a relinquishment shall be delayed until after the court has determined the identity of the father and has awarded custody of the child to the father or terminated his rights under this part.

History: En. 61-329 by Sec. 2, Ch. 422, L. 1977; R.C.M. 1947, 61-329; amd. Sec. 4, Ch. 530, L. 1981; amd. Sec. 2, Ch. 1, Sp. L. 1981.

Compiler's Comments

1981 Special Session Amendment: Substituted subsection (2) for "Pending the termination or other disposition of the rights of the father of the child born out of wedlock, the mother may deliver physical custody of her child to the department or a licensed child placing agency by filing a petition pursuant to 40-6-132. Upon petition, the court may enter an order authorizing temporary care of the child."; added subsection (3).

1981 Regular Session Amendment: Substituted "relinquish" for "release" throughout the section; substituted "birth" for "natural" after "consent of the" near the middle of (1); substituted a provision dealing with delivering physical custody for a provision dealing with executing a release terminating rights in (2); deleted former subsection (3) (for text of section prior to 1981 regular session amendment see sec. 2, Ch. 422, L. 1977).

Cross-References

Consent required for adoption, 40-8-111.
Effect of final decree of adoption, 40-8-125.

40-6-126. Notice of intent to claim paternity. (1) Before the birth of a child born out of wedlock, a person claiming under oath to be the father of the child may file a verified notice of intent to claim paternity with the district court in any county of this state. The form of the notice shall be prescribed by the director of the department of health and environmental sciences and supplied to the clerks of the district courts. The notice shall include the claimant's address. On the next business day after receipt of the notice, the court shall transmit the notice to the records and statistics bureau of the department of health and environmental sciences. If the mother's address is stated on the notice, the records and statistics bureau shall send a copy of the notice by first-class mail to the mother of the child at the stated address.

(2) A person filing a notice of intent to claim paternity or acknowledging paternity in accordance with 40-6-105 shall be presumed to be the father of the child for purposes of this part unless the mother denies that the claimant is the father. Such notice is admissible in a paternity proceeding under 40-6-107 and creates a rebuttable presumption as to the paternity of that child for purposes of that section. Such notice creates a rebuttable presumption as to paternity of the child for purposes of a dependency or neglect proceeding under Title 41, chapter 3.

(3) A person who makes a timely filing of notice of intent to claim paternity or who formally acknowledges paternity under 40-6-105 is entitled to notice of any hearing to determine the identity of the father of the child and any hearing to determine or terminate his paternal rights to the child.

History: **En. 61-330 by Sec. 3, Ch. 422, L. 1977; R.C.M. 1947, 61-330.**

Cross-References

Definition and examples of disputable presumptions, 26-1-602.

Presumptions, Art. III, Montana Rules of Evidence (see Title 26, ch. 10).

Certificates, 50-15-109.

40-6-127. Expected child — intent to release or consent — petition and notice. (1) In order to provide due notice at the earliest possible time to a putative father who may have an interest in the custody of an expected child or in the mother's intended release of an expected child for adoption and in order to facilitate early placement of a child for adoption, a woman pregnant out of wedlock may file with the district court an ex parte petition which sets forth the following:

(a) her intent to release her expected child for adoption;

(b) the approximate date and location of conception;

(c) the expected date of her delivery; and

(d) the identity and whereabouts of the putative father of her expected child.

(2) The petition may allege more than one putative father whenever circumstances warrant. The petition shall be verified. Upon the filing of the petition, the court shall issue a notice of intent to release, which notice shall be served upon the putative father or fathers in the manner provided by the Montana Rules of Civil Procedure or in any other manner which the court may direct. Proof of such service shall be filed with the court.

(3) A notice of intent to release shall:

(a) indicate the approximate date and location of conception of the child and the expected date of delivery;

(b) inform the putative father of his right under 40-6-126 to file a notice of intent to claim paternity before the birth of the child;

(c) inform the putative father of the rights to which his filing of notice of intent to claim paternity will entitle him under 40-6-126(3); and

(d) inform the putative father that his failure to file a notice of intent to claim paternity before the expected date of delivery constitutes a waiver of his right to receive the notice to which he would otherwise be entitled under 40-6-126(3) and constitutes a denial of his interest in the custody of the child, which denial shall result in the court's termination of his rights to the child.

(4) The petition shall be filed with the court not later than 30 days prior to the expected date of delivery.

History: **En. 61-331 by Sec. 4, Ch. 422, L. 1977; R.C.M. 1947, 61-331.**

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

Adoption of children, Title 40, ch. 8, part 1.

Certificates, 50-15-109.

40-6-128. Proceeding to determine father's identity and terminate rights. (1) If a child is born out of wedlock and the mother executes or proposes to execute a release terminating her rights to the child or if the child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished or the mother or person having custody of the child shall file a petition in the district court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined not to exist by the court. The court shall hold a hearing as soon as practical to determine the identity of the father and to determine or terminate the rights of the father as provided in this section and in 40-6-129 and 40-6-130. This section is not applicable if the father is a person whose consent to adoption is not required under 40-8-111.

(2) Proof of service of a notice of intent to release or the putative father's verified acknowledgment of notice of intent to release shall be filed with the court, if such notice was given to the putative father. The court shall request the records and statistics bureau of the department of health and environmental sciences to send to the court a copy of any notice of intent to claim paternity of the particular child which the bureau has received.

(3) If the mother has failed to name a putative father or has failed to file a notice of intent to release, the court shall cause inquiry to be made of the mother in an effort to identify the natural father. The inquiry shall include the following:

(a) whether the mother was married at the time of conception of the child or at any time thereafter;

(b) whether the mother was cohabiting with a man at the time of conception or birth of the child;

(c) whether the mother has received support payments or promises of support payments with respect to the child or in connection with her pregnancy; or

(d) whether any man has formally or informally acknowledged or declared his possible paternity of the child.

(4) Notwithstanding this section or any other provisions of law and in consideration of her right to privacy, no mother of a child who is the subject of proceedings under this part may be compelled to testify concerning or to divulge the identity of the father or possible father of that child.

(5) Notice of the hearing shall be served upon the following persons in the manner appropriate under the Montana Rules of Civil Procedure or any manner which the court shall direct:

(a) a putative father who has timely filed a notice of intent to claim paternity as provided in 40-6-126 or 40-6-127;

(b) a putative father who has not been served with a notice of intent to release at least 30 days before the expected date of delivery specified in the notice of intent to release;

(c) any other male who was not served pursuant to 40-6-127(2) with a notice of intent to release and who the court, after inquiry of the mother or any other appropriate person, has reason to believe may be the father of the child.

(6) The notice of hearing shall inform the putative father that his failure to appear at the hearing constitutes a denial of his interest in custody of the child, which denial will result in the court's termination of his rights to the child.

(7) Proof of service of the notice of hearing required by subsection (5) shall be filed with the court. A verified acknowledgment of service by the

party to be served is proof of personal service. Notice of hearing need not be required if the putative father is present at the hearing. A waiver of notice of hearing by a person entitled to receive it is sufficient. If no person has been identified as the natural father or possible father, the court, on the basis of all information available, shall determine whether publication or public posting of notice of the proceeding is likely to lead to identification and if so shall order publication or public posting at the times and places and in the manner it considers appropriate. The name of the natural mother may be included in such publication only with her written consent.

(8) At the hearing, the court shall receive evidence as to the identity of the father of the child. Based upon the evidence received and the court's inquiry, the court shall enter a finding identifying the father or declaring that the identity of the father cannot be determined.

(9) If the court finds that the father of the child is a person who did not receive either a timely notice of intent to release pursuant to 40-6-127 or a notice required pursuant to subsection (5) of this section and who has not waived his right to notice of hearing and is not present at the hearing, the court shall adjourn further proceedings until that person is served with a notice of hearing.

History: En. 61-332 by Sec. 5, Ch. 422, L. 1977; R.C.M. 1947, 61-332.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

Legitimacy of children born in wedlock, 40-6-201.

Legitimacy of children born after dissolution of marriage, 40-6-202.

Effect of final decree, 40-8-125.

Certificates, 50-15-109.

40-6-129. Grounds for termination of father's rights. (1) If the court has proof that the person whom it determines pursuant to 40-6-128 to be the father of the child was timely served with notice of intent to release pursuant to 40-6-127 or was served with or waived the notice of hearing required by 40-6-128(5), the court may permanently terminate the rights of the putative father if the putative father:

(a) submits a verified acknowledgment of his paternity and a denial of his interest in custody of the child;

(b) files a denial of paternity. For purposes of this section the filing of the denial of paternity constitutes a waiver of notice of hearing and constitutes a denial of his interests in the custody of the child.

(c) was served with a notice of intent to release in accordance with 40-6-127(2) at least 30 days before the expected date of delivery specified in that notice but failed to file an intent to claim paternity either before the expected date of delivery or before the birth of the child; or

(d) is given proper notice of hearing in accordance with subsection (5) or (7) of 40-6-128 but either fails to appear at the hearing or appears and denies his interest in the custody of the child.

(2) If the identity of the father cannot be determined or if the identity of the father is known but his whereabouts cannot be determined, the court shall receive evidence to determine the facts in the matter. The court may terminate the rights of the putative father if the court finds from the evidence that reasonable effort has been made to identify and locate the father and that any of the following circumstances exist:

(a) The putative father, whose identity is not known, has not made a provision for the child's care and did not provide support for the mother during her pregnancy or during her hospitalization.

(b) The putative father, whose identity is known but whose whereabouts are unknown, has not provided support for the mother, has not shown any interest in the child, and has not made provision for the child's care, for at least 90 days preceding the hearing required under 40-6-128.

(3) Subject to the disposition of an appeal, upon the expiration of 6 months after an order terminating parental rights is issued under this section, the order cannot be questioned by any person, in any manner or upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter.

History: En. 61-333 by Sec. 6, Ch. 422, L. 1977; R.C.M. 1947, 61-333.

Cross-References

Presumption of paternity, 40-6-105.

40-6-130. Best interests of the child — custody to father — legitimation. (1) If the putative father appears at the hearing and requests custody of the child, the court shall inquire into his fitness and his ability to properly care for the child and shall determine whether the father's parental rights should be given recognition in view of his effort or lack of effort to make provision for the mother while she was pregnant and for the child upon birth and whether the best interests of the child will be served by granting custody to him or to the agency of the state of Montana, licensed adoption agency, or person to whom the mother has released or proposed to release custody of the child. If the court finds that it would not be in the best interests of the child to grant custody to the putative father, the court shall terminate his rights to the child.

(2) If the mother of the child has released the custody of the child to an agency of the state of Montana, a licensed adoption agency, or a person, the agency or person shall be a proper party to petition the court for custody of the child.

(3) If the parental rights of the mother are terminated pursuant to this part or other law and if the court awards custody of the child out of wedlock to the putative father, the court shall enter an order granting custody to the putative father and legitimating the child for all purposes.

History: En. 61-334 by Sec. 7, Ch. 422, L. 1977; R.C.M. 1947, 61-334.

Cross-References

Best interest of child, 40-4-212.

Child adoption agencies, Title 53, ch. 4, part 4.

40-6-131. Uniformity of application and construction. This part shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this part among states enacting it.

History: En. 61-327 by Sec. 29, Ch. 512, L. 1975; R.C.M. 1947, 61-327.

40-6-132. Repealed. Sec. 5, Ch. 1, Sp. L. 1981.

History: En. Sec. 1, Ch. 530, L. 1981.

40-6-133. Repealed. Sec. 5, Ch. 1, Sp. L. 1981.

History: En. Sec. 2, Ch. 530, L. 1981.

40-6-134. Repealed. Sec. 5, Ch. 1, Sp. L. 1981.
History: En. Sec. 3, Ch. 530, L. 1981.

40-6-135. Relinquishment of parental rights — form, execution, and revocation. (1) Any parent or guardian who proposes to relinquish custody of a child for purposes of placing the child for adoption may do so by executing a relinquishment by which all parental rights to the child are voluntarily relinquished to an agency of the state of Montana or a licensed adoption agency.

(2) Except as otherwise provided in this section, a relinquishment shall be by a separate instrument executed before a notary public.

(3) If the person from whom a relinquishment is required is a member of any of the armed services or is in prison, the relinquishment may be executed and acknowledged before any person authorized by law to administer oaths.

(4) If the relinquishment is executed in another state or country, the court having jurisdiction over the adoption proceeding in this state shall determine whether the relinquishment was executed in accordance with the laws of that state or country and may not proceed unless it finds that the relinquishment was so executed.

(5) Upon the filing of a properly and voluntarily executed relinquishment of a child by a parent or guardian, the court shall immediately issue an order terminating the rights of that parent or guardian to that child. If the rights of both parents, the surviving parent, or the guardian have been terminated, the court shall issue an order committing the child to the agency of the state of Montana or the licensed adoption agency to which the relinquishment was given.

(6) Entry of an order terminating the rights of both parents pursuant to subsection (5) terminates the jurisdiction of the district court over the child in any divorce or separate maintenance action.

(7) Upon petition of a person who executed a relinquishment and of the agency of the state of Montana or licensed adoption agency to which the child was relinquished, the court with which the relinquishment was filed may grant a hearing to consider whether the relinquishment should be revoked. A relinquishment may not be revoked if the child has been placed for adoption. A verbatim record of testimony related to the petition shall be made.

History: En. Sec. 1, Ch. 1, Sp. L. 1981.

Cross-References

Officers who may administer oaths, 1-6-101.

Reporter's report prima facie evidence, 3-5-612.

Jurisdiction — child custody proceedings, 40-4-211.

Minor parent, 40-8-105.

Consent required for adoption, 40-8-111.

Withdrawal of consent, 40-8-112.

Effect of final decree of adoption, 40-8-125.

Parent-child legal relationship termination, Title 41, ch. 3, part 6.

Child adoption agencies, Title 53, ch. 4, part 4.

Part 2

Obligations of Parents

Part Cross-References

Mandatory child safety restraint systems, 61-9-419 through 61-9-423.

40-6-201. Legitimacy of children born in wedlock. All children born in wedlock are presumed to be legitimate.

History: En. Sec. 280, Civ. C. 1895; re-en. Sec. 3738, Rev. C. 1907; re-en. Sec. 5830, R.C.M. 1921; Cal. Civ. C. Sec. 193; Field Civ. C. Sec. 86; re-en. Sec. 5830, R.C.M. 1935; R.C.M. 1947, 61-101.

Cross-References

Presumption of legitimacy, 26-1-602.

Presumptions, Art. III, Montana Rules of Evidence (see Title 26, ch. 10).

Birth — vital statistics, Title 50, ch. 15, part 2.

40-6-202. Legitimacy of children born after dissolution of marriage. All children of a woman who has been married, born within 10 months after the dissolution of her marriage, are presumed to be legitimate children of that marriage.

History: En. Sec. 281, Civ. C. 1895; re-en. Sec. 3739, Rev. C. 1907; re-en. Sec. 5831, R.C.M. 1921; Cal. Civ. C. Sec. 194; Based on Field Civ. C. Sec. 87; re-en. Sec. 5831, R.C.M. 1935; R.C.M. 1947, 61-102.

Cross-References

Complete list of conclusive presumptions, 26-1-601.

Presumption of legitimacy, 26-1-602.

Birth — vital statistics, Title 50, ch. 15, part 2.

40-6-203. Child legitimatized by marriage of parents. A child born before wedlock becomes legitimate by the subsequent marriage of its parents.

History: En. Sec. 11, p. 410, Bannack Stat.; re-en. Sec. 11, p. 521, Cod. Stat. 1871; re-en. Sec. 864, 5th Div. Rev. Stat. 1879; re-en. Sec. 1425, 5th Div. Comp. Stat. 1887; amd. Sec. 302, Civ. C. 1895; re-en. Sec. 3760, Rev. C. 1907; re-en. Sec. 5852, R.C.M. 1921; Cal. Civ. C. Sec. 215; re-en. Sec. 5852, R.C.M. 1935; R.C.M. 1947, 61-123.

Cross-References

Form of application, license, marriage certificate, and consent — names of children included, 40-1-107.

New birth certificate upon proof of legitimation, 50-15-207.

40-6-204 through 40-6-210 reserved.

40-6-211. Obligations of parents for the support and education of their children. The parent or parents entitled to the custody of a child must give him support and education suitable to his circumstances.

History: En. Sec. 283, Civ. C. 1895; re-en. Sec. 3741, Rev. C. 1907; re-en. Sec. 5833, R.C.M. 1921; Cal. Civ. C. Sec. 196; Field Civ. C. Sec. 89; re-en. Sec. 5833, R.C.M. 1935; amd. Sec. 21, Ch. 293, L. 1975; R.C.M. 1947, 61-104.

Cross-References

Earnings and accumulations of married persons, 40-2-205.

Earnings and accumulations when separated, 40-2-206.

Work and labor of married person, 40-2-207.

Individual property of married person — how far liable, 40-2-209.

Necessity determined by standard of living, 40-2-210.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

40-6-212. Allowance to parent. The proper court may direct an allowance to be made to the parent of a child out of the child's property for the past or future support and education of the child, on such conditions as may be proper, whenever such direction is for the child's benefit.

History: En. Sec. 288, Civ. C. 1895; re-en. Sec. 3746, Rev. C. 1907; re-en. Sec. 5838, R.C.M. 1921; Cal. Civ. C. Sec. 201; Field Civ. C. Sec. 92; re-en. Sec. 5838, R.C.M. 1935; amd. Sec. 14, Ch. 33, L. 1977; R.C.M. 1947, 61-109.

Cross-References
Duty of child to support indigent parents, 40-6-301.

40-6-213. Remedy when parent dies without providing for support of child. If a parent chargeable with the support of a child dies leaving the child chargeable to the county and leaving an estate sufficient for the child's support, the county commissioners of the county may claim provision for the child's support from the parent's estate by civil action and for this purpose may have the same remedies as any creditors against that estate and against the heirs, devisees, and the next of kin of the parent.

History: En. Sec. 292, Civ. C. 1895; re-en. Sec. 3750, Rev. C. 1907; re-en. Sec. 5842, R.C.M. 1921; Cal. Civ. C. Sec. 205; Based on Field Civ. C. Sec. 96; re-en. Sec. 5842, R.C.M. 1935; amd. Sec. 15, Ch. 33, L. 1977; R.C.M. 1947, 61-113.

Cross-References
Child support, 40-4-204.
Modification and termination of support, 40-4-208.
Estates — creditors' claims, Title 72, ch. 3, part 8.

40-6-214. Reciprocal duties of parents and children in maintaining each other. It is the duty of the father, the mother, and the children of any poor person who is unable to maintain himself by work to maintain such person to the extent of their ability. The promise of an adult child to pay for necessaries previously furnished to such parent is binding.

History: En. Sec. 293, Civ. C. 1895; re-en. Sec. 3751, Rev. C. 1907; re-en. Sec. 5843, R.C.M. 1921; Cal. Civ. C. Sec. 206; Field Civ. C. Sec. 97; re-en. Sec. 5843, R.C.M. 1935; R.C.M. 1947, 61-114.

Cross-References
Earnings and accumulations of married person, 40-2-205.
Earnings and accumulations of married person when separated, 40-2-206.
Work and labor of married person, 40-2-207.
Individual property of married person — how far liable, 40-2-209.
Necessity determined by standard of living, 40-2-210.
Duty of child to support indigent parents, 40-6-301.
Minor cannot disaffirm contract for necessaries, 41-1-305.

40-6-215. When parent liable for necessaries supplied to child. If a parent neglects to provide articles necessary for his child under his charge, according to his circumstances, a third person may in good faith supply such necessaries and recover the reasonable value thereof from the parent.

History: En. Sec. 294, Civ. C. 1895; re-en. Sec. 3752, Rev. C. 1907; re-en. Sec. 5844, R.C.M. 1921; Cal. Civ. C. Sec. 207; Field Civ. C. Sec. 98; re-en. Sec. 5844, R.C.M. 1935; R.C.M. 1947, 61-115.

Cross-References
Earnings and accumulations of married person, 40-2-205.
Earnings and accumulations of married person when separated, 40-2-206.
Work and labor of married person, 40-2-207.
Individual property of married person — how far liable, 40-2-209.
Necessity determined by standard of living, 40-2-210.
Minor cannot disaffirm contract for necessaries, 41-1-305.
Parents liable to Department for Aid to Dependent Children payments, 53-4-248.

40-6-216. When parent not liable for support furnished child. A parent is not bound to compensate the other parent or a relative for the voluntary support of his child, without an agreement for compensation, or to compensate a stranger for the support of a child who has abandoned the parent without just cause.

History: En. Sec. 295, Civ. C. 1895; re-en. Sec. 3753, Rev. C. 1907; re-en. Sec. 5845, R.C.M. 1921; Cal. Civ. C. Sec. 208; Field Civ. C. Sec. 99; re-en. Sec. 5845, R.C.M. 1935; R.C.M. 1947, 61-116.

Cross-References

Liability for acts or debts of spouse, 40-2-106.

Individual property of married person — how far liable, 40-2-209.

Necessity determined by standard of living, 40-2-210.

Minor cannot disaffirm contract for necessaries, 41-1-305.

40-6-217. Married person not bound for support of spouse's children by former marriage. A married person is not bound to support his spouse's children by a former marriage; but if he receives them into his family and supports them, it is presumed that he does so as a parent and, where such is the case, they are not liable to him for their support nor he to them for their services.

History: En. Sec. 296, Civ. C. 1895; re-en. Sec. 3754, Rev. C. 1907; re-en. Sec. 5846, R.C.M. 1921; Cal. Civ. C. Sec. 209; Field Civ. C. Sec. 100; re-en. Sec. 5846, R.C.M. 1935; amd. Sec. 22, Ch. 293, L. 1975; R.C.M. 1947, 61-117.

Cross-References

Debts of spouse contracted before marriage, 40-2-208.

40-6-218. Compensation and support of person after attaining majority. Where a person, after attaining majority, continues to serve and to be supported by the parent, neither party is entitled to compensation, in the absence of an agreement therefor.

History: En. Sec. 297, Civ. C. 1895; re-en. Sec. 3755, Rev. C. 1907; re-en. Sec. 5847, R.C.M. 1921; Cal. Civ. C. Sec. 210; Field Civ. C. Sec. 101; re-en. Sec. 5847, R.C.M. 1935; amd. Sec. 16, Ch. 33, L. 1977; R.C.M. 1947, 61-118.

Cross-References

Minors and adults defined, 41-1-101.

40-6-219 and 40-6-220 reserved.

40-6-221. Custody, services, and earnings of child. The father and mother of an unmarried minor child are equally entitled to the custody, services, and earnings of the child. If either parent be dead or unable or refuses to take the custody or has abandoned his or her family, the other is entitled to the custody, services, and earnings of the child, unless custody is determined otherwise pursuant to 40-4-221.

History: En. Sec. 284, Civ. C. 1895; re-en. Sec. 3742, Rev. C. 1907; amd. Sec. 1, Ch. 61, L. 1915; re-en. Sec. 5834, R.C.M. 1921; Cal. Civ. C. Sec. 197; Based on Field Civ. C. Sec. 90; re-en. Sec. 5834, R.C.M. 1935; amd. Sec. 26, Ch. 512, L. 1975; amd. Sec. 13, Ch. 33, L. 1977; R.C.M. 1947, 61-105; amd. Sec. 5, Ch. 127, L. 1979.

Cross-References

Best interest of child, 40-4-212.

Minor cannot disaffirm contract for necessaries, 41-1-305.

Child labor, Title 41, ch. 2.

40-6-222. Custody of children where husband and wife living separate. The husband and father, as such, has no rights superior to those of the wife and mother in regard to the care, custody, education, and control of the children of the marriage while such husband and wife live separate and apart from each other.

History: En. Sec. 285, Civ. C. 1895; re-en. Sec. 3743, Rev. C. 1907; re-en. Sec. 5835, R.C.M. 1921; Cal. Civ. C. Sec. 198; re-en. Sec. 5835, R.C.M. 1935; R.C.M. 1947, 61-106.

Cross-References

Earnings and accumulations of married person — when separated, 40-2-206.

40-6-223. When parent may bring action for the exclusive control of children — decree. Without application for divorce, the husband or wife may bring an action for the exclusive control of the children of the marriage, and the court or judge may, during the pendency of such action or at the final hearing thereof or afterwards, make such order or decree in regard to the support, care, custody, education, and control of the children of the marriage as may be just and in accordance with the natural rights of the parents and the best interests of the children and may at any time thereafter amend, vary, or modify such order or decree as the natural rights and the interests of the parties, including the children, may require.

History: En. Sec. 286, Civ. C. 1895; re-en. Sec. 3744, Rev. C. 1907; re-en. Sec. 5836, R.C.M. 1921; Cal. Civ. C. Sec. 199; re-en. Sec. 5836, R.C.M. 1935; R.C.M. 1947, 61-107.

Cross-References

Necessity determined by standard of living, 40-2-210.

Alteration of legal relation by contract — separation agreement, 40-2-303.

Temporary order or temporary injunction, 40-4-121.

Best interest of child, 40-4-212.

Temporary orders, 40-4-213.

Modification of custody, 40-4-219.

40-6-224. When custody may be awarded without dissolution proceedings. When a husband and wife live in a state of separation without the marriage being dissolved, any court of competent jurisdiction, upon application of either, if an inhabitant of this state, may inquire into the custody of any unmarried minor child of the marriage and may award the custody of such child to either for such time and under such regulations as the case may require.

History: En. Sec. 301, Civ. C. 1895; re-en. Sec. 3759, Rev. C. 1907; re-en. Sec. 5851, R.C.M. 1921; Cal. Civ. C. Sec. 214; Field Civ. C. Sec. 106; re-en. Sec. 5851, R.C.M. 1935; amd. Sec. 17, Ch. 33, L. 1977; R.C.M. 1947, 61-122.

Cross-References

Legal separation, 40-4-104.

Temporary order or temporary injunction, 40-4-121.

Separation agreement, 40-4-201.

Temporary custody orders, 40-4-213.

40-6-225 through 40-6-230 reserved.

40-6-231. Right of parent to determine the residence of child. A parent entitled to the custody of a child has a right to change his residence, subject to the power of the proper court to restrain a removal which would prejudice the rights or welfare of the child.

History: En. Sec. 300, Civ. C. 1895; re-en. Sec. 3758, Rev. C. 1907; re-en. Sec. 5850, R.C.M. 1921; Cal. Civ. C. Sec. 213; Field Civ. C. Sec. 104; re-en. Sec. 5850, R.C.M. 1935; R.C.M. 1947, 61-121.

Cross-References

Residence — rules for determining, 1-1-215.

Best interest of child, 40-4-212.

40-6-232. Parental control over property of child. The parent, as such, has no control over the property of the child.

History: En. Sec. 289, Civ. C. 1895; re-en. Sec. 3747, Rev. C. 1907; re-en. Sec. 5839, R.C.M. 1921; Cal. Civ. C. Sec. 202; Field Civ. C. Sec. 93; re-en. Sec. 5839, R.C.M. 1935; R.C.M. 1947, 61-110.

Cross-References

Enforcement of minor's rights, 41-1-202.

Delegation of power by minors forbidden, 41-1-301.

40-6-233. Remedy for parental abuse. The abuse of parental authority is the subject of judicial cognizance in a civil action brought by the child or by its relative within the third degree or by the county commissioners of the county where the child resides. When the abuse is established, the child may be freed from the dominion of the parent and the duty of support and education enforced.

History: En. Sec. 290, Civ. C. 1895; re-en. Sec. 3748, Rev. C. 1907; re-en. Sec. 5840, R.C.M. 1921; Cal. Civ. C. Sec. 203; Based on Field Civ. C. Sec. 94; re-en. Sec. 5840, R.C.M. 1935; R.C.M. 1947, 61-111.

Cross-References

Child abuse, neglect, and dependency, Title 41, ch. 3.

Endangering the welfare of children, 45-5-622.

Sexual abuse of children, 45-5-625.

40-6-234. When parental authority ceases. The authority of the parent ceases:

(1) upon the appointment, by a court, of a guardian of the person of a child;

(2) upon the marriage of a child; or

(3) upon its attaining majority.

History: En. Sec. 291, Civ. C. 1895; re-en. Sec. 3749, Rev. C. 1907; re-en. Sec. 5841, R.C.M. 1921; Cal. Civ. C. Sec. 204; Field Civ. C. Sec. 95; re-en. Sec. 5841, R.C.M. 1935; R.C.M. 1947, 61-112.

Cross-References

Marriage, Title 40, ch. 1.

Best interest of child, 40-4-212.

Effect of final decree, 40-8-125.

Minors and adults defined, 41-1-101.

Dispositional hearing — abuse, neglect, and dependency, 41-3-406.

Limited emancipation at age 16, 41-3-408.

Guardians of minors, Title 72, ch. 5, part 2.

40-6-235. Parent may relinquish services and custody of child. The parent, whether solvent or insolvent, may relinquish to the child the right of controlling him and receiving his earnings. Abandonment by the parent is presumptive evidence of such relinquishment.

History: En. Sec. 298, Civ. C. 1895; re-en. Sec. 3756, Rev. C. 1907; re-en. Sec. 5848, R.C.M. 1921; Cal. Civ. C. Sec. 211; Field Civ. C. Sec. 102; re-en. Sec. 5848, R.C.M. 1935; R.C.M. 1947, 61-119.

Cross-References

Children born out of wedlock — relinquishment — consent, 40-6-125.

Relinquishment of parental rights, 40-6-135.

Service of summons — how abandonment established, 41-5-503.

Endangering the welfare of children, 45-5-622.

40-6-236. Wages of minors. The wages of a minor employed in service may be paid him until the parent or guardian entitled thereto gives the employer notice that he claims such wages.

History: En. Sec. 299, Civ. C. 1895; re-en. Sec. 3757, Rev. C. 1907; re-en. Sec. 5849, R.C.M. 1921; Cal. Civ. C. Sec. 212; Based on Field Civ. C. Sec. 103; re-en. Sec. 5849, R.C.M. 1935; R.C.M. 1947, 61-120.

Cross-References
Payment of wages generally, 39-3-204.
Child labor, Title 41, ch. 2, part 1.

40-6-237. Destruction of property by minor — liability of parents. Any municipal corporation, county, city, town, school district, or department of the state of Montana, any person, or any religious organization whether incorporated or unincorporated is entitled to recover damages in a civil action in an amount not to exceed $2,500 in a court of competent jurisdiction from the parents of any person under the age of 18 years, living with the parents, who shall maliciously or willfully destroy property, real, personal, or mixed, belonging to such municipal corporation, county, city, town, school district, department of the state of Montana, person, or religious organization.

History: En. Sec. 1, Ch. 195, L. 1957; amd. Sec. 1, Ch. 227, L. 1977; R.C.M. 1947, 61-112.1; amd. Sec. 1, Ch. 560, L. 1981.

Compiler's Comments
1981 Amendment: Increased the maximum amount that can be recovered under this section from $1,500 to $2,500.

Cross-References
Duties and sanctions — suspension and expulsion of pupils, 20-5-201.
Youth Court Act — purpose, 41-5-102.
Criminal mischief, 45-6-101.
Application of minors for drivers' licenses, 61-5-108.

40-6-238. Limitation on amount of recovery. The recovery shall be limited to the actual damages in an amount not to exceed $2,500 in addition to taxable court costs and a reasonable attorney's fee to be set by the court not to exceed $100. The right to recover attorney fees as provided by this section is limited to a person bringing an action under 40-6-237.

History: En. Sec. 2, Ch. 195, L. 1957; amd. Sec. 1, Ch. 178, L. 1971; amd. Sec. 2, Ch. 227, L. 1977; R.C.M. 1947, 61-112.2; amd. Sec. 2, Ch. 560, L. 1981.

Compiler's Comments
1981 Amendment: Increased the maximum amount that can be recovered under this section from $1,500 to $2,500.

Cross-References
Duties and sanctions — suspension and expulsion of pupils, 20-5-201.
Attorneys' fees, Title 25, ch. 10, part 3.
Right to compensatory damages, 27-1-202.
Damages to be reasonable, 27-1-302.

Part 3

Obligations of Children

40-6-301. Duty of child to support indigent parents. It is hereby declared and made the duty of every adult child, having the ability so to do, to furnish and provide necessary food, clothing, shelter, and medical attendance for his indigent parent or parents, unless, in the judgment of the court or jury, he is excused therefrom by reason of intemperance, indolence, immorality, or profligacy of such parent.

History: En. Sec. 1, Ch. 42, L. 1915; re-en. Sec. 5853, R.C.M. 1921; re-en. Sec. 5853, R.C.M. 1935; R.C.M. 1947, 61-124.

Cross-References
Reciprocal duties of parents and children in maintaining each other, 40-6-214.
Minor cannot disaffirm contract for necessaries, 41-1-305.

40-6-302. Failure to support — misdemeanor. Any person violating the provisions of 40-6-301 shall be deemed guilty of a misdemeanor.

History: En. Sec. 2, Ch. 42, L. 1915; re-en. Sec. 5854, R.C.M. 1921; re-en. Sec. 5854, R.C.M. 1935; R.C.M. 1947, 61-125.

Cross-References

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Nonsupport, 45-5-621.

40-6-303. Civil action to enforce duty to support. A civil suit may be instituted and maintained for the enforcement of the provisions of 40-6-301 by any such child, where there is more than one adult child, or by the parent to whom such support is due or by the county attorney, and in case there is more than one such child, the court or the jury upon the hearing is authorized and empowered to apportion the expenses of such support between the adult children, and the court shall enter judgment in accordance with such finding and apportionment; provided, that such civil action shall not be construed as barring the arrest and conviction of such person for misdemeanor.

History: En. Sec. 3, Ch. 42, L. 1915; re-en. Sec. 5855, R.C.M. 1921; re-en. Sec. 5855, R.C.M. 1935; R.C.M. 1947, 61-126.

Cross-References

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

CHAPTER 7

UNIFORM CHILD CUSTODY JURISDICTION ACT

Part 1 — Uniform Child Custody Jurisdiction Act

Section

40-7-101. Short title.
40-7-102. Purpose — construction.
40-7-103. Definitions.
40-7-104. Jurisdiction.
40-7-105. Notice and opportunity to be heard.
40-7-106. Notice to persons outside this state — submission to jurisdiction.
40-7-107. Simultaneous proceedings in other states.
40-7-108. Inconvenient forum.
40-7-109. Jurisdiction declined by reason of conduct.
40-7-110. Information under oath to be submitted to the court.
40-7-111. Additional parties.
40-7-112. Appearance of parties and child.
40-7-113. Legal effect of custody decree.
40-7-114. Recognition of out-of-state custody decrees.
40-7-115. Modification of custody decree of another state.
40-7-116. Filing and enforcement of custody decree of another state.
40-7-117. Registry of out-of-state custody decrees and proceedings.
40-7-118. Certified copies of custody decree.
40-7-119. Taking testimony in another state.
40-7-120. Hearings and studies in another state — orders to appear.
40-7-121. Assistance to courts of other states.
40-7-122. Preservation of documents for use in other states.
40-7-123. Request for court records of another state.

40-7-124. International application.
40-7-125. Priority.

Part 1

Uniform Child Custody Jurisdiction Act

Part Cross-References
Custody jurisdiction, 40-4-211.
Custodial interference, 45-5-304.

40-7-101. Short title. This chapter may be cited as the "Uniform Child Custody Jurisdiction Act".

History: En. 61-401 by Sec. 1, Ch. 537, L. 1977; R.C.M. 1947, 61-401.

40-7-102. Purpose — construction. (1) The general purposes of this chapter are to:

(a) avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

(b) promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;

(c) assure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;

(d) discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(e) deter abductions and other unilateral removals of children undertaken to obtain custody awards;

(f) avoid relitigation of custody decisions of other states in this state insofar as feasible;

(g) facilitate the enforcement of custody decrees of other states;

(h) promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child; and

(i) make uniform the law of those states which enact it.

(2) This chapter shall be construed to promote the general purposes stated in this section.

History: En. 61-402 by Sec. 2, Ch. 537, L. 1977; R.C.M. 1947, 61-402.

Cross-References
Effect of judgment or final order — when conclusive, 26-3-201.
Effect of judicial record of another state, 26-3-203.
Custodial interference, 45-5-304.

40-7-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child.

(2) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights. It does not include a decision relating to child support or any other monetary obligation of any person.

(3) "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, and includes issues of custody in adoption proceedings. A "custody proceeding" is not a proceeding pursuant to Title 41, chapter 3 or 5.

(4) "Decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding and includes an initial decree and a modification decree.

(5) "Home state" means the state in which the child, immediately preceding the time involved, lived with his parents, a parent, or a person acting as parent, for at least 6 consecutive months and in the case of a child less than 6 months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the 6-month or other period.

(6) "Initial decree" means the first custody decree concerning a particular child.

(7) "Modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court.

(8) "Physical custody" means actual possession and control of a child.

(9) "Person acting as parent" means a person other than a parent who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.

(10) "State" means any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

History: En. 61-403 by Sec. 3, Ch. 537, L. 1977; R.C.M. 1947, 61-403.

40-7-104. Jurisdiction. The jurisdictional provisions of 40-4-211 apply to this chapter.

History: En. 61-404 by Sec. 4, Ch. 537, L. 1977; R.C.M. 1947, 61-404.

40-7-105. Notice and opportunity to be heard. Before making a decree under this chapter, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons are outside this state, notice and opportunity to be heard shall be given pursuant to 40-7-106.

History: En. 61-405 by Sec. 5, Ch. 537, L. 1977; R.C.M. 1947, 61-405.

Cross-References

Jurisdiction — commencement of proceedings — child custody, 40-4-211.

Modification of custody, 40-4-219.

40-7-106. Notice to persons outside this state — submission to jurisdiction. (1) Notice required for the exercise of jurisdiction over a person outside this state shall be given in a manner reasonably calculated to give actual notice and may be:

(a) by personal delivery outside this state in the manner prescribed for service of process within this state;

(b) in the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;

(c) by any form of mail addressed to the person to be served and requesting a receipt; or

(d) as directed by the court, including publication, if other means of notification are ineffective.

(2) Notice under this section shall be served, mailed, or delivered or last published at least 10 days before any hearing in this state.

(3) Proof of service outside this state may be made by affidavit of the individual who made the service or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(4) Notice is not required if a person submits to the jurisdiction of the court.

History: En. 61-406 by Sec. 6, Ch. 537, L. 1977; R.C.M. 1947, 61-406.

Cross-References

Jurisdiction of persons, Rule 4B, M.R.Civ.P. (see Title 25, ch. 20).

Proof of service, Rule 4D(8), M.R.Civ.P. (see Title 25, ch. 20).

Jurisdiction — commencement of proceedings — child custody, 40-4-211.

40-7-107. Simultaneous proceedings in other states. (1) A court of this state may not exercise its jurisdiction under this chapter if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this chapter unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons.

(2) Before hearing the petition in a custody proceeding, the court shall examine the pleadings and other information supplied by the parties under 40-7-110 and shall consult the child custody registry established under 40-7-117 concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state, it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(3) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction, it shall stay the proceeding and communicate with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with 40-7-120 through 40-7-123. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state, it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in

another state after it assumed jurisdiction, it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum.

History: **En. 61-407 by Sec. 7, Ch. 537, L. 1977; R.C.M. 1947, 61-407.**

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

Jurisdiction — commencement of proceedings, 40-4-211.

40-7-108. Inconvenient forum. (1) A court which has jurisdiction under this chapter to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(2) A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

(3) In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

(a) if another state is or recently was the child's home state;

(b) if another state has a closer connection with the child and his family or with the child and one or more of the contestants;

(c) if substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;

(d) if the parties have agreed on another forum which is no less appropriate; and

(e) if the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in 40-7-102.

(4) Before determining whether to decline or retain jurisdiction, the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

(5) If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.

(6) The court may decline to exercise its jurisdiction under this chapter if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.

(7) If it appears to the court that it is clearly an inappropriate forum, it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other expenses,

including attorneys' fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(8) Upon dismissal or stay of proceedings under this section the court shall inform the court found to be the more appropriate forum of this fact or, if the court which would have jurisdiction in the other state is not certainly known, transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.

(9) Any communication received from another state informing this state of a finding of inconvenient forum because a court of this state is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction, the court of this state shall inform the original court of this fact.

History: En. 61-408 by Sec. 8, Ch. 537, L. 1977; R.C.M. 1947, 61-408.

Cross-References

Change of venue, Title 25, ch. 2, part 2.

Allowable costs, Title 25, ch. 10, part 2.

Attorneys' fees, Title 25, ch. 10, part 3.

Effect of other judicial orders — when disputable presumption created, 26-3-202.

Hearings in custody proceedings, 40-4-216.

40-7-109. Jurisdiction declined by reason of conduct. (1) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct, the court may decline to exercise jurisdiction if this is just and proper under the circumstances.

(2) Unless required in the interest of the child, the court may not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state, the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

(3) In appropriate cases a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses.

History: En. 61-409 by Sec. 9, Ch. 537, L. 1977; R.C.M. 1947, 61-409.

Cross-References

Costs, Title 25, ch. 10, parts 1 and 2.

Attorneys' fees, Title 25, ch. 10, part 3.

Best interests of child, 40-4-212, 40-6-130.

Custody modification, 40-4-219.

Custodial interference, 45-5-304.

40-7-110. Information under oath to be submitted to the court. (1) Each party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit each party shall further declare under oath whether:

(a) he has participated (as a party, witness, or in any other capacity) in any other litigation concerning the custody of the same child in this or any other state;

(b) he has information of any custody proceeding concerning the child pending in a court of this or any other state; and

(c) he knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(2) If the declaration as to any of the above items is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(3) Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding.

History: En. 61-410 by Sec. 10, Ch. 537, L. 1977; R.C.M. 1947, 61-410.

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

Jurisdiction — commencement of custody proceedings, 40-4-211.

Affidavit practice, 40-4-220.

40-7-111. Additional parties. If the court learns from information furnished by the parties pursuant to 40-7-110 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside this state, he shall be served with process or otherwise notified in accordance with 40-7-106.

History: En. 61-411 by Sec. 11, Ch. 537, L. 1977; R.C.M. 1947, 61-411.

Cross-References

Joinder of persons needed for just adjudication, Rule 19, M.R.Civ.P. (see Title 25, ch. 20).

40-7-112. Appearance of parties and child. (1) The court may order any party to the proceeding who is in this state to appear personally before the court. If that party has physical custody of the child, the court may order that he appear personally with the child.

(2) If a party to the proceeding whose presence is desired by the court is outside this state with or without the child, the court may order that the notice given under 40-7-106 include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(3) If a party to the proceeding who is outside this state is directed to appear under subsection (2) or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child, if this is just and proper under the circumstances.

History: En. 61-412 by Sec. 12, Ch. 537, L. 1977; R.C.M. 1947, 61-412.

Cross-References

Hearings, custody proceedings, 40-4-216.

40-7-113. Legal effect of custody decree. A custody decree rendered by a court of this state which had jurisdiction under 40-7-104 binds all parties who have been served in this state or notified in accordance with 40-7-106 or who have submitted to the jurisdiction of the court and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this chapter.

History: **En. 61-413 by Sec. 13, Ch. 537, L. 1977; R.C.M. 1947, 61-413.**

Cross-References

Decree of dissolution of marriage, 40-4-108.

Separation agreement, 40-4-201.

Modification of custody, 40-4-219.

40-7-114. Recognition of out-of-state custody decrees. The courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this chapter or which was made under factual circumstances meeting the jurisdictional standards of the chapter, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this chapter.

History: **En. 61-414 by Sec. 14, Ch. 537, L. 1977; R.C.M. 1947, 61-414.**

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

40-7-115. Modification of custody decree of another state. (1) If a court of another state has made a custody decree, a court of this state may not modify that decree unless it appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this chapter or has declined to assume jurisdiction to modify the decree and the court of this state has jurisdiction.

(2) If a court of this state is authorized under subsection (1) and 40-7-109 to modify a custody decree of another state, it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with 40-7-123.

History: **En. 61-415 by Sec. 15, Ch. 537, L. 1977; R.C.M. 1947, 61-415.**

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

Modification of custody, 40-4-219.

40-7-116. Filing and enforcement of custody decree of another state. (1) A certified copy of a custody decree of another state may be filed in the office of the clerk of any district court of this state. The clerk shall treat the decree in the same manner as a custody decree of the district court of this state. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this state.

(2) A person violating a custody decree of another state which makes it necessary to enforce the decree in this state may be required to pay necessary travel and other expenses, including attorneys' fees, incurred by the party entitled to the custody or his witnesses.

History: **En. 61-416 by Sec. 16, Ch. 537, L. 1977; R.C.M. 1947, 61-416.**

Cross-References

General duties of Clerk of the District Court, 3-5-501.

Effect of judicial record of another state, 26-3-203.

Judicial supervision, 40-4-218.

40-7-117. Registry of out-of-state custody decrees and proceedings. The clerk of each district court shall maintain a registry in which he shall enter the following:

(1) certified copies of custody decrees of other states received for filing;

(2) communications as to the pendency of custody proceedings in other states;

(3) communications concerning a finding of inconvenient forum by a court of another state; and

(4) other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this state or the disposition to be made by it in a custody proceeding.

History: En. 61-417 by Sec. 17, Ch. 537, L. 1977; R.C.M. 1947, 61-417.

Cross-References

General duties of Clerk of the District Court, 3-5-501.

Register of actions, 3-5-504.

40-7-118. Certified copies of custody decree. The clerk of the district court of this state, at the request of the court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person.

History: En. 61-418 by Sec. 18, Ch. 537, L. 1977; R.C.M. 1947, 61-418.

Cross-References

General duties of Clerk of the District Court, 3-5-501.

40-7-119. Taking testimony in another state. In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

History: En. 61-419 by Sec. 19, Ch. 537, L. 1977; R.C.M. 1947, 61-419.

Cross-References

Depositions, Rules 26 through 31, M.R.Civ.P. (see Title 25, ch. 20).

Powers and duties of guardian of minor, 72-5-231.

40-7-120. Hearings and studies in another state — orders to appear. (1) A court of this state may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the court of this state; and to forward to the court of this state certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties or, if necessary, ordered paid by the state.

(2) A court of this state may request the appropriate court of another state to order a party to custody proceedings pending in the court of this

state to appear in the proceedings and, if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

History: En. 61-420 by Sec. 20, Ch. 537, L. 1977; R.C.M. 1947, 61-420.

Cross-References

Costs, Title 25, ch. 10.

Effect of judicial record of another state, 26-3-203.

Investigations and reports, 40-4-215.

Hearings, 40-4-216.

40-7-121. Assistance to courts of other states. (1) Upon request of the court of another state the courts of this state which are competent to hear custody matters may order a person in this state to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this state or may order social studies to be made for use in a custody proceeding in another state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced and any social studies prepared shall be forwarded by the clerk of the court to the requesting court.

(2) A person within this state may voluntarily give his testimony or statement in this state for use in a custody proceeding outside this state.

(3) Upon request of the court of another state a competent court of this state may order a person in this state to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that state travel and other necessary expenses will be advanced or reimbursed.

History: En. 61-421 by Sec. 21, Ch. 537, L. 1977; R.C.M. 1947, 61-421.

Cross-References

Copies of proceedings, 3-5-604.

Costs, Title 25, ch. 10.

Depositions, Rules 26 through 31, M.R.Civ.P. (see Title 25, ch. 20).

Investigations and reports, 40-4-215.

40-7-122. Preservation of documents for use in other states. In any custody proceeding in this state the court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents until the child reaches 18 years of age. Upon appropriate request of the court of another state, the court shall forward to the other court certified copies of any or all of such documents.

History: En. 61-422 by Sec. 22, Ch. 537, L. 1977; R.C.M. 1947, 61-422.

Cross-References

Copies of proceedings, 3-5-604.

Investigations and reports, 40-4-215.

Affidavit practice, 40-4-220.

40-7-123. Request for court records of another state. If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this state, the court of this state upon taking jurisdiction of the case shall request of the court of the other state a certified copy of the transcript of any court record and other documents mentioned in 40-7-122.

History: En. 61-423 by Sec. 23, Ch. 537, L. 1977; R.C.M. 1947, 61-423.

Cross-References

Copies of proceedings, 3-5-604.

Effect of judicial record of another state, 26-3-203.

40-7-124. International application. The general policies of this chapter extend to the international area. The provisions of this chapter relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody institutions rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard have been given to all affected persons.

History: **En. 61-424 by Sec. 24, Ch. 537, L. 1977; R.C.M. 1947, 61-424.**

Cross-References

Effect of judgments of other foreign tribunals, 26-3-205.

40-7-125. Priority. A custody proceeding which raises a question of existence or exercise of jurisdiction under this chapter shall be given calendar priority and handled expeditiously.

History: **En. 61-425 by Sec. 25, Ch. 537, L. 1977; R.C.M. 1947, 61-425.**

Cross-References

Custody hearings to receive priority, 40-4-216.

CHAPTER 8

ADOPTION

Part 1 — Adoption of Children

Section
40-8-101. Short title.
40-8-102. Uniformity of interpretation.
40-8-103. Definitions.
40-8-104. Who may be adopted.
40-8-105. Minor parent.
40-8-106. Who may adopt.
40-8-107. Venue.
40-8-108. Who may place a child for adoption.
40-8-109. Placement for adoption by parents.
40-8-110 reserved.
40-8-111. Consent required for adoption.
40-8-112. Withdrawal of consent.
40-8-113. Consent of child.
40-8-114 through 40-8-120 reserved.
40-8-121. Petition for adoption.
40-8-122. Investigation.
40-8-123. Summary decree.
40-8-124. Interlocutory and final decree.
40-8-125. Effect of final decree.
40-8-126. Confidentiality of record and proceedings.
40-8-127. Appeal.
40-8-128. Foreign adoption decrees.

Part 2 — Adoption of Adults

40-8-201. Adoption of adult.
40-8-202. Procedure.

Part 1

Adoption of Children

Part Cross-References

Adoption records not open to public inspection, 2-6-104 (see 40-8-126).

When court proceeding may be private, 3-1-313.

Certificates of adoption or annulment of adoption, 50-15-303.

Substitute birth certificate for person adopted, 50-15-304.

Subsidized adoption, Title 53, ch. 4, part 3.

Child adoption agencies, Title 53, ch. 4, part 4.

40-8-101. Short title. This part may be cited as the "Uniform Adoption Act", as amended.

History: En. Sec. 17, Ch. 240, L. 1957; R.C.M. 1947, 61-217; amd. Sec. 5, Ch. 530, L. 1981.

Compiler's Comments

1981 Amendment: Added "as amended" to the end of the section.

40-8-102. Uniformity of interpretation. This part shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 16, Ch. 240, L. 1957; R.C.M. 1947, 61-216.

40-8-103. Definitions. As used in this chapter, unless the context otherwise requires the following definitions apply:

(1) "Adoption" means the act of creating the legal relationship between parent and child when it does not exist genetically.

(2) "Adoptive parent" means an adult who has become the mother or father of a child through the legal process of adoption.

(3) "Agency" means a public or voluntary agency licensed by any jurisdiction within the United States and expressly empowered to place children as a preliminary to a possible adoption.

(4) "Birth parent" means the mother or father of genetic origin of a child but does not include a putative father of a child.

(5) "Child" means any person under 18 years of age.

(6) "Court" means a Montana district court or a tribal court of any Montana Indian reservation.

(7) "Department" means the department of social and rehabilitation services, as established and provided for in Title 2, chapter 15, part 22.

(8) "Extended family member" means an adult who is the child's grandparent, aunt or uncle, brother or sister, niece or nephew, or first cousin.

(9) "Parent" means the birth or adoptive mother or the birth, adoptive, or legal father whose parental rights have not been terminated.

(10) "Placement for adoption" means the transfer of physical custody of a child with respect to whom all parental rights have been terminated and who is otherwise legally free for adoption to a person who intends to adopt the child.

(11) "Relinquishment" means the informed and voluntary release in writing of all parental rights with respect to a child by a parent to an agency or individual pursuant to 40-6-135 or 40-8-109, whichever is applicable.

History: En. Sec. 1, Ch. 240, L. 1957; R.C.M. 1947, 61-201; amd. Sec. 6, Ch. 530, L. 1981; amd. Sec. 3, Ch. 1, Sp. L. 1981.

Compiler's Comments

1981 Special Session Amendment: Substituted "40-6-135 or 40-8-109, whichever is applicable" for "40-6-132 through 40-6-134" at the end of (11); and made minor changes in phraseology.

1981 Regular Session Amendment: Substituted "chapter" for "part" in the first sentence of the section; deleted former subsection (1) defining "adoptee"; inserted subsections (1) and (2); deleted former subsection (4) defining "adult adoptee"; inserted subsections (3) and

(4); rewrote the definition of "child" substantially in (5) (for text of section prior to 1981 regular session amendment see sec. 1, Ch. 240, L. 1957); added subsections (6) through (11).

Cross-References

Special proceedings, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Minors and adults defined, 41-1-101.

40-8-104. Who may be adopted. (1) Any minor may be adopted if:

(a) the minor has no living parent; or

(b) the parental rights of the living parents of the minor have been terminated according to the laws of this state or of another jurisdiction; or

(c) the living parents consent to the adoption.

(2) An adult may be adopted as provided in part 2 of this chapter.

History: En. Sec. 2, Ch. 240, L. 1957; R.C.M. 1947, 61-202; amd. Sec. 7, Ch. 530, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "minor" for "child present within this state at the time the petition for adoption is filed, irrespective of place of birth or place of residence," in the first sentence of the section; added subsections (1)(a), (1)(b), (1)(c), and (2).

Cross-References

Adoption of adults, Title 40, ch. 8, part 2.

Hard-to-place child, 53-4-303.

40-8-105. Minor parent. A parent who is a minor shall have the right to relinquish his or her child for adoption, and such relinquishment shall not be subject to revocation by reason of such minority.

History: En. 61-218 by Sec. 6, Ch. 199, L. 1961; R.C.M. 1947, 61-218.

Cross-References

Children born out of wedlock — relinquishment — consent, 40-6-125.

Proceeding to determine father's identity and terminate rights, 40-6-128.

Relinquishment of parental rights, 40-6-135.

Minors and adults defined, 41-1-101.

40-8-106. Who may adopt. The following persons are eligible to adopt a child:

(1) a husband and wife jointly or either the husband or wife if the other spouse is a parent of the child;

(2) an unmarried person who is at least 18 years old;

(3) a married person at least 18 years old who is legally separated from the other spouse;

(4) in the case of an illegitimate child, its unmarried father or mother.

History: En. Sec. 3, Ch. 240, L. 1957; amd. Sec. 15, Ch. 240, L. 1971; amd. Sec. 22, Ch. 94, L. 1973; R.C.M. 1947, 61-203.

Cross-References

Husband and wife, Title 40, ch. 2.

Legal separation, 40-4-104.

Best interest of the child — custody to father — legitimation, 40-6-130.

Minors and adults defined, 41-1-101.

Eligibility for subsidy, 53-4-308.

Child adoption agencies, Title 53, ch.4, part 4.

40-8-107. Venue. Proceedings for adoption must be brought in the district court of the county where the petitioners reside.

History: En. Sec. 4, Ch. 240, L. 1957; R.C.M. 1947, 61-204.

Cross-References

Residence — rules for determining, 1-1-215.

Venue, Title 25, ch.2.

40-8-108. Who may place a child for adoption. A child may be placed for adoption only by:

(1) the department;

(2) a licensed child placing agency; or

(3) the child's parents.

History: **En. Sec. 10, Ch. 530, L. 1981.**

40-8-109. Placement for adoption by parents. (1) No parent may make a placement of a child for adoption with an individual who is not a stepparent or a member of the child's extended family unless the parent files with the district court for the county in which the prospective adoptive parent or the parent making the placement resides:

(a) a notice of parental placement; and

(b) a relinquishment of parental rights to the prospective adoptive parents executed voluntarily and in accordance with 40-6-135(2) through (4).

(2) The notice of parental placement and the relinquishment shall be filed prior to a parent's placement of the child with an individual who intends to adopt the child. The notice of parental placement shall contain the following information:

(a) the name and address of each birth parent, if known, and if unknown, the steps taken to ascertain the whereabouts of the parent or parents;

(b) the name and address of each prospective adoptive parent;

(c) the name and address or expected date and place of birth of the child; and

(d) the name and address of counsel, guardian ad litem, or other representative, if any, for each of the parties in (a) through (c) of subsection (2).

(3) Upon receipt of a notice of parental placement and a relinquishment, the court shall require that the department examine the child and conduct interviews with the birth parents and prospective adoptive parents and report to the court within 30 days but not earlier than 5 days after the birth of the child. The report must state whether the following requirements for placement have been met:

(a) that the decision to place was voluntarily made by the birth parents;

(b) that the department has no temporary authority to investigate or provide protective services to the family under 41-3-402;

(c) that the birth parents, the prospective adoptive parents, and their representatives have agreed in writing to provide the court with sworn affidavits containing itemized statements of all fees charged or to be charged, expenses incurred or to be incurred, and payments received or to be received in connection with the proposed adoptive placement;

(d) that the prospective adoptive parents have been provided a medical and social history of the child and birth parents; and

(e) that the proposed placement is in the child's best interest.

(4) Within 45 days of filing of the notice of parental placement and the relinquishment, the court shall schedule a hearing to consider the proposed placement.

(5) (a) At least 5 days' notice of the time and place of the hearing must be given to the birth parents, the prospective adoptive parents, any named guardian ad litem, and the agency or person who conducted the investigation under subsection (3).

(b) The hearing shall be closed to all persons except those persons entitled to notice and their representatives or counsel.

(6) If the court finds that all requirements for placement have been met, the court may issue an order or schedule a hearing for the purpose of terminating parental rights and granting temporary custody to the prospective

adoptive parents. The prospective adoptive parents must file their petition to adopt within 30 days of the order.

(7) If the court finds that all requirements for the adoptive placement have not been met, the court may issue any order appropriate to protect the child.

History: En. Sec. 11, Ch. 530, L. 1981; amd. Sec. 4, Ch. 1, Sp. L. 1981.

Compiler's Comments

1981 Special Session Amendment: Substituted "an individual" for "a person" after "for adoption with" in (1); deleted "a notice of parental placement" after "the parent files" in (1); inserted subsections (1)(a) and (1)(b); inserted "and the relinquishment" after "parental placement" in (2), (3), and (4); substituted "an individual" for "a person" after "placement of the child with" in (2).

40-8-110 reserved.

40-8-111. Consent required for adoption. (1) An adoption of a child may be decreed when there have been filed written consents to adoption executed by:

(a) both parents, if living, or the surviving parent of a child, provided that consent is not required from a father or mother:

(i) adjudged guilty by a court of competent jurisdiction of assault on the child, as provided in 45-5-201; endangering the welfare of children, concerning the child, as provided in 45-5-622; or sexual abuse of children, toward the child, as provided in 45-5-625;

(ii) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child;

(iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned the child, as defined in 41-3-102(3)(d);

(iv) who has caused the child to be maintained by any public or private children's institution, charitable agency, or any licensed adoption agency or the department of social and rehabilitation services of the state of Montana for a period of 1 year without contributing to the support of the child during said period, if able;

(v) if it is proven to the satisfaction of the court that the father or mother, if able, has not contributed to the support of the child during a period of 1 year before the filing of a petition for adoption; or

(vi) whose parental rights have been judicially terminated;

(b) the legal guardian of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and such guardian has authority by order of the court appointing him to consent to the adoption;

(c) the executive head of an agency if the child has been relinquished for adoption to such agency or if the rights of the parents have been judicially terminated or if both parents are dead and custody of the child has been legally vested in such agency with authority to consent to adoption of the child; or

(d) any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated, but in such case the court having jurisdiction of the custody of the child must consent to adoption and a certified copy of its order shall be attached to the petition.

(2) The consents required by subsections (1)(a) and (1)(b) shall be acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of the department of social and rehabilitation services or of an agency or witnessed by a representative of the court.

History: En. Sec. 5, Ch. 240, L. 1957; amd. Sec. 2, Ch. 199, L. 1961; amd. Sec. 48, Ch. 121, L. 1974; amd. Sec. 27, Ch. 512, L. 1975; R.C.M. 1947, 61-205; amd. Sec. 6, Ch. 33, L. 1979; amd. Sec. 8, Ch. 530, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "assault on the child, as provided in 45-5-201; endangering the welfare of children, concerning the child, as provided in 45-5-622; or sexual abuse of children" for "physical cruelty" in (1)(a)(i); added "as provided in 45-5-625" to (1)(a)(i); added "as defined in 41-3-102(3)(d)" to (1)(a)(iii).

Cross-References

Taking acknowledgments and affidavits, 3-1-404.

Children born out of wedlock — relinquishment — consent, 40-6-125.

Expected child — intent to release or consent, 40-6-127.

Proceeding to determine father's identity and terminate rights, 40-6-128.

Relinquishment of parental rights, 40-6-135.

Dispositional hearing in abuse and neglect cases, 41-3-406.

Parents liable to Department for Aid to Dependent Children payments, 53-4-248.

Subsidized adoptions, Title 53, ch. 4, part 3.

Child adoption agencies, Title 53, ch. 4, part 4.

Termination of appointment of guardian for a minor, 72-5-233.

40-8-112. Withdrawal of consent. Withdrawal of any consent filed in connection with a petition for adoption hereunder shall not be permitted, except that the court, after notice and opportunity to be heard is given to the petitioner, to the person seeking to withdraw consent, and to any agency participating in the adoption proceedings, may, if it finds that the best interests of the child will be furthered thereby, issue a written order permitting the withdrawal of such consent. The entry of the interlocutory or final decree of adoption renders any consent irrevocable.

History: En. Sec. 6, Ch. 240, L. 1957; R.C.M. 1947, 61-206.

Cross-References

Best interests of child, 40-4-212.

Statute of Limitations — adoption, 40-6-108.

Revocation of releases, 40-6-135.

40-8-113. Consent of child. If a child is 12 years of age or over, he must consent to his adoption. Consent must be given in court or be in writing in such form as the court shall direct.

History: En. Sec. 7, Ch. 240, L. 1957; R.C.M. 1947, 61-207; amd. Sec. 9, Ch. 530, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "If a child is" for "Consent of the child if" at the beginning of the section; substituted "he must consent to his adoption" for "shall be required" at the end of the first sentence of the section; substituted "Consent must" for "such consent shall" at the beginning of the last sentence of the section.

Cross-References

Enforcement of minor's rights, 41-1-202.

40-8-114 through 40-8-120 reserved.

40-8-121. Petition for adoption. (1) A petition for adoption shall be filed in duplicate, verified by the petitioners, and shall specify:

(a) the full names, ages, and place of residence of the petitioners and, if married, the place and date of the marriage;

(b) when the petitioners acquired or intend to acquire custody of the child and from what person or agency;

(c) the date and place of birth of child, if known;

(d) the name used for the child in the proceeding and, if a change in name is desired, the new name;

(e) that it is the desire of the petitioners that the relationship of parent and child be established between them and the child;

(f) a full description and statement of value of all property owned or possessed by the child;

(g) facts, if any, which excuse consent on the part of a parent to the adoption.

(2) One copy of the petition shall be retained by the court. The other shall be sent to the department of social and rehabilitation services. An additional copy shall be sent to any agency participating in the adoption proceeding.

(3) Any written consent required by this part may be attached to the petition or may be filed after the filing of the petition, with the consent of the court.

(4) Except as provided in 40-8-109, a petition for adoption must be filed within 1 year of the time the child was placed for adoption with the petitioner.

History: En. Sec. 8, Ch. 240, L. 1957; amd. Sec. 48, Ch. 121, L. 1974; amd. Sec. 18, Ch. 33, L. 1977; R.C.M. 1947, 61-208; amd. Sec. 12, Ch. 530, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (4).

Cross-References

Petition for change of name of natural person, 27-31-101.

Procedure in adult adoption, 40-8-202.

Child adoption agencies, Title 53, ch. 4, part 4.

40-8-122. Investigation. (1) Upon the filing of a petition for adoption, the court shall order an investigation to be made by the department or by a licensed child placing agency or other person named by the court. The investigation may be waived if the petitioner is a stepparent of the child or if one of the petitioners is a member of the child's extended family. The report of investigation shall be filed with the court by the investigator within 30 days from the issuance of the order for investigation, unless time therefor is extended by the court. The report of the investigation shall state:

(a) whether the child is legally free for adoption;

(b) whether the proposed home is a suitable one for the child;

(c) that medical and social histories have been provided to the adoptive parent; and

(d) any other circumstances and conditions which may have a bearing on the adoption and of which the court should have knowledge.

(2) The court may order agencies named in subsection (1) located in one or more counties to make separate investigations on separate parts of the inquiry as may be appropriate.

(3) The report of the investigation shall become a part of the files in the case and shall contain a definite recommendation stating the reasons for or against the proposed adoption.

History: En. Sec. 9, Ch. 240, L. 1957; amd. Sec. 48, Ch. 121, L. 1974; amd. Sec. 2, Ch. 495, L. 1975; R.C.M. 1947, 61-209; amd. Sec. 13, Ch. 530, L. 1981.

Compiler's Comments

1981 Amendment: Substantially rewrote subsections (1), (1)(a), and (1)(b) to reflect the need for a licensed child placing agency and waiver regarding stepparent adoption and made numerous changes in grammar (see Sec. 2, Ch. 495, L.

1975, for former text); made a change in grammar in (3). Substituted parties who are to conduct the investigation and provided for parties who may waive the investigation; deleted a provision giving the court discretion to fix a time less than 30 days for filing the report; inserted subsection (1)(c); and generally rewrote the section (for former text see Sec. 2, Ch. 495, L. 1975).

Cross-References

Records to be confidential, 53-4-306.

Certification as hard to place, 53-4-307.

Child adoption agencies, Title 53, ch. 4, part 4.

40-8-123. Summary decree. If the child is a member of the extended family of one of the petitioners or is a stepchild of the petitioner or the court finds that the best interests of the child will be furthered thereby, the court in its discretion, after examination of a report ordered pursuant to 40-8-122, may waive the entry of an interlocutory decree and the waiting period of 6 months provided in 40-8-124 and grant a final decree of adoption if satisfied that the adoption is in the best interests of the child.

History: En. Sec. 10, Ch. 240, L. 1957; amd. Sec. 3, Ch. 199, L. 1961; R.C.M. 1947, 61-210; amd. Sec. 14, Ch. 530, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "If the child is a member of the extended family of" for "If the child is related by blood to" at the beginning of the section; substituted "the court in its discretion, after examination of a report ordered pursuant to 40-8-122" for "the court, after examination of the report specified in 40-8-122, if such report had been ordered by said court, in its discretion"; and made a minor change in grammar.

Cross-References

Best interests of child, 40-4-212, 40-6-130.

40-8-124. Interlocutory and final decree. (1) Upon examination of the report described in 40-8-122, if such report has been considered necessary by the court, and after hearing, the court may issue an interlocutory decree giving the care and custody to the petitioners pending the further order of the court.

(2) When a petition has been filed seeking the adoption of a child, the court must cause service of process to be made on the parent or parents of the child, except in those cases hereinafter provided, in the following manner:

(a) The court shall order a citation to issue to the parent or parents in the name of the state of Montana and under the seal of the court directing such parent or parents to appear in court at a time to be fixed by the court and show cause why the petition should not be granted.

(b) Such citation, together with a copy of the petition for adoption, shall be personally served upon such parent or parents. If, however, any such parent or parents cannot be found within this state, service may be had by publication of a copy of the citation in the manner provided for the publication of summons by Rule 4, M.R.Civ.P.

(3) If, after completion of such service, any parent so served does not appear, the court may act upon the petition and the order of the court thereon shall be binding upon all persons so served; provided that any such person may appeal from the order in the manner and form provided for appeals from a judgment in civil actions.

(4) The petitioners and the child shall appear at the hearing, unless the presence of the child is waived by the court.

(5) Service of process, as aforesaid, need not be made on a parent who has consented in writing to an adoption or on any parent whose consent to adoption is not required under the provisions of 40-8-111, and service of process

shall not be made on any parent who has relinquished his child to the department of social and rehabilitation services or an adoption agency licensed by the department.

(6) After an interlocutory decree has been issued by the court, the investigator, if any, shall observe the child in his adoptive home and report in writing to the court within 6 months on any circumstances or conditions which may have a bearing on the adoption. After 6 months from the date of the interlocutory decree, the petitioners may apply to the court for a final decree of adoption. The court shall thereupon set a time and place for final hearing. Notice of the time and date of the hearing shall be served on the department of social and rehabilitation services and the investigator, if any. The investigator, if any, shall file with the court a written report of his findings and recommendations and certify that the described investigation, if any, has been made since the granting of the interlocutory decree. After hearing on said application, at which the petitioners and the child shall appear, unless the presence of the child is waived by the court, the court may enter a final decree of adoption if satisfied that the adoption is for the best interests of the child. If the adoption is denied, an appropriate order shall be made as to the future custody of the child.

History: En. Sec. 11, Ch. 240, L. 1957; amd. Sec. 4, Ch. 199, L. 1961; amd. Sec. 1, Ch. 2, L. 1963; amd. Sec. 48, Ch. 121, L. 1974; amd. Sec. 19, Ch. 33, L. 1977; R.C.M. 1947, 61-211.

Cross-References

Best interests of child, 40-4-212, 40-6-130.

Certificates of adoption, 50-15-303.

40-8-125. Effect of final decree. (1) After the final decree of adoption is entered, the relation of parent and child and all the rights, duties, and other legal consequences of the natural relation of child and parent shall thereafter exist between such adopted child and the adoptive parents adopting such child and the kindred of the adoptive parents. From the date of the final decree of adoption, the child shall be entitled to inherit real and personal property from and through the adoptive parents and the kindred of the adoptive parents in accordance with the statutes of descent and distribution and the adoptive parents and their kindred shall be entitled to inherit real and personal property from and through the child in accordance with said statutes.

(2) After a final decree of adoption is entered, the natural parents and the kindred of the natural parents of the adopted child, unless they are the adoptive parents or the spouse of an adoptive parent, shall be relieved of all parental responsibilities for said child and have no rights over such adopted child or to his property by descent and distribution.

History: En. Sec. 12, Ch. 240, L. 1957; amd. Sec. 1, Ch. 102, L. 1965; R.C.M. 1947, 61-212.

Cross-References

Parent and child relationship defined, 40-6-102.

How parent and child relationship established, 40-6-104.

Relinquishment of parental rights, 40-6-135.

Substitute birth certificate for person adopted, 50-15-304.

Eligibility for subsidy, 53-4-308.

Establishment of parent-child relationship, 72-2-213.

Adopted persons included in class gift terminology, 72-2-503.

40-8-126. Confidentiality of record and proceedings. (1) Unless the court shall otherwise order, all hearings held in proceedings under this part shall be confidential and shall be held in closed court without admittance of any person other than interested parties and their counsel.

(2) All papers and records pertaining to the adoption shall be kept as a permanent record of the court and withheld from inspection. No person shall have access to such records except:

(a) for good cause shown, on order of the judge of the court in which the decree of adoption was entered; or

(b) as provided in 50-15-206.

(3) All files and records pertaining to said adoption proceedings in the county departments of public welfare, the department of social and rehabilitation services, or any authorized agencies shall be confidential and withheld from inspection except upon order of court for good cause shown or as provided in 50-15-206.

History: En. Sec. 13, Ch. 240, L. 1957; amd. Sec. 18, Ch. 121, L. 1974; R.C.M. 1947, 61-213; amd. Sec. 3, Ch. 228, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (2)(b); added "or as provided in 50-15-206" at the end of (3).

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Records of officers open to public inspection, 2-6-104.

Sittings of court — when private, 3-1-313.

Certificate of adoption, 50-15-303.

Substitute birth certificate for person adopted, 50-15-304.

Records to be confidential, 53-4-306.

40-8-127. Appeal. An appeal may be taken from any final order, judgment, or decree rendered hereunder in the district court by any person aggrieved thereby, in the manner provided for appeals from the court in other civil matters.

History: En. Sec. 14, Ch. 240, L. 1957; amd. Sec. 20, Ch. 33, L. 1977; R.C.M. 1947, 61-214.

Cross-References

Montana Rules of Appellate Civil Procedure, Title 25, ch. 21.

40-8-128. Foreign adoption decrees. When the relationship of parent and child has been created by a decree of adoption of a court of any other state or nation, the rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined by 40-8-125.

History: En. Sec. 15, Ch. 240, L. 1957; R.C.M. 1947, 61-215.

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

Part 2

Adoption of Adults

40-8-201. Adoption of adult. A person who is an adult and has attained the age of legal majority may be adopted without the consent of his parents.

History: En. Sec. 1, Ch. 229, L. 1947; R.C.M. 1947, 61-139.

Cross-References

Minors and adults defined, 41-1-101.

Establishment of parent-child relationship, 72-2-213.

Adopted persons included in class gift terminology, 72-2-503.

40-8-202. Procedure. Except as otherwise inconsistent with this part, the procedure and law for adoption of minors set forth in 40-8-106, 40-8-107, 40-8-121, 40-8-123, 40-8-124, and 40-8-125 shall be applicable in proceedings for the adoption of an adult under the provisions of this part, provided that provisions concerning an interlocutory decree shall not be applicable in the case of the adoption of an adult.

History: En. Sec. 2, Ch. 229, L. 1947; amd. Sec. 5, Ch. 199, L. 1961; R.C.M. 1947, 61-140.

CHAPTER 9

GRANDPARENT VISITATION

Part 1 — General Provisions

Section
40-9-101. Application of Montana Rules of Civil Procedure.
40-9-102. Grandparent visitation rights.

Part 1

General Provisions

40-9-101. Application of Montana Rules of Civil Procedure. (1) Except as otherwise provided, the Montana Rules of Civil Procedure apply to all proceedings under this section and 40-9-102.

(2) A proceeding for grandparent visitation under this section and 40-9-102 shall be entitled, "In re the visitation of ......"

(3) The initial pleading in all proceedings under this section and 40-9-102 shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings shall be denominated as provided in the Montana Rules of Civil Procedure.

History: En. Sec. 1, Ch. 17, L. 1979.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

40-9-102. Grandparent visitation rights. (1) Except as provided in subsection (5), the district court may grant to a grandparent of a child reasonable visitation rights.

(2) Visitation rights granted under this section may be granted only upon a finding by the court, after a hearing, that the visitation would be in the best interest of the child.

(3) No person may petition the court under this section more often than once every 2 years unless there has been a significant change in the circumstances of the child; the child's parent, guardian, or custodian; or the child's grandparent.

(4) The court may appoint an attorney to represent the interests of a child with respect to visitation when such interests are not adequately represented by the parties to the proceeding.

(5) This section does not apply if the child has been adopted by a person other than a stepparent or a grandparent. Visitation rights granted under this section terminate upon the adoption of the child by a person other than a stepparent or a grandparent.

History: En. Sec. 2, Ch. 17, L. 1979; amd. Sec. 1, Ch. 616, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted present language for "If the father or mother of an unmarried child is deceased, the district court may grant to the parents of the deceased person reasonable visitation rights with the child"; and inserted (3) and (4).

Cross-References

Best interests of child, 40-4-212, 40-6-130.
Visitation, 40-4-217.
Effect of final decree of adoption, 40-8-125.

TITLE 41

MINORS

Ch.
1. Rights and Obligations of Minors.
2. Child Labor.
3. Child Abuse, Neglect, and Dependency.
4. Interstate Placement of Children.
5. Youth Court Act.
6. Interstate Compact on Juveniles.

CHAPTER 1

RIGHTS AND OBLIGATIONS OF MINORS

Part 1 — Minority

Section
41-1-101. Minors and adults defined.
41-1-102. Periods of minority — how calculated.
41-1-103. Unborn children.

Part 2 — Civil Actions Concerning Minors

41-1-201. Liability of minors for wrongs — exemplary damages.
41-1-202. Enforcement of minor's rights.

Part 3 — Power to Contract

41-1-301. Delegation of power by minors forbidden.
41-1-302. Contracts of minors — disaffirmance.
41-1-303. Capacity of minors to borrow money for education.
41-1-304. When minors may disaffirm.
41-1-305. Minor cannot disaffirm contract for necessaries.
41-1-306. Minor cannot disaffirm certain obligations.

Part 4 — Validity of Consent to Medical Treatment

41-1-401. Health professional defined.
41-1-402. Validity of consent of minor for health services.
41-1-403. Release of information by physician.
41-1-404. Financial responsibility of minor.
41-1-405. Emergencies and special situations.
41-1-406. Psychiatric or psychological counseling under urgent circumstances.
41-1-407. Immunity and responsibility of psychologist, physician, or health care facility.

Chapter Cross-References

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

Residence of minors, 1-1-215.

Youth centers — recreational facilities, 7-16-4103, 7-16-4104, 7-16-4108.

Curfew for minors, 7-32-2302.

Minor beneficiaries under PERS, 19-3-1301, 19-3-1302, 19-3-1304.

Care of children of deceased policemen and firemen, Title 19, ch. 9, 11.

Education of children, Title 20.

Minors not to engage in parimutuel betting, gambling, bingo, raffles, or sports pools, 23-4-301, 23-5-315, 23-5-416, 23-5-506.

Banking law relating to minors, 32-1-107, 32-1-444.

Savings and loan shares held by minors, 32-2-418.

Minors' interests in credit union shares, 32-3-504, 32-3-506.

Insurance law relating to minors, 33-7-305, 33-7-506, 33-7-507, 33-15-103, 33-15-401, 33-15-502, 33-20-115, 33-20-1111, 33-22-212, 33-22-304, 33-22-604.

Uniform Reciprocal Enforcement of Support Act, Title 40, ch. 5, part 1.

Administrative enforcement of support for dependent children, Title 40, ch. 5, part 2.

Parent and child, Title 40, ch. 6.

Uniform Child Custody Jurisdiction Act, Title 40, ch. 7.

Day-care facilities, Title 53, ch. 4, part 5.

Operation of vehicles by minors, 61-5-107 through 61-5-109, 61-5-112, 61-5-202.

Property law relating to minors, 70-1-404, 70-1-420, 70-1-422.

Guardianship, Title 72, ch. 5.

Uniform Transfers to Minors Act, Title 72, ch. 26.

Youth trapping license, 87-2-605.

No fishing license required for minor under 15 years of age, 87-2-805.

Part 1

Minority

Part Cross-References

Age of majority, Art. II, sec. 14, Mont. Const.

41-1-101. Minors and adults defined. (1) Minors are:

(a) males under 18 years of age;

(b) females under 18 years of age.

(2) All other persons are adults.

History: En. Secs. 10, 12, Civ. C. 1895; re-en. Secs. 3584, 3586, Rev. C. 1907; re-en. Sec. 5673, R.C.M. 1921; Cal. Civ. C. Sec. 25; Field Civ. C. Sec. 11; re-en. Sec. 5673, R.C.M. 1935; amd. Sec. 16, Ch. 240, L. 1971; amd. Sec. 23, Ch. 94, L. 1973; R.C.M. 1947, 64-101.

Cross-References

Adult rights, Art. II, sec. 14, Mont. Const.

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

University students — minor defined, 20-25-501.

Who may contract, 28-2-201.

Agency — applicability of laws relating to capacity to contract, 28-10-704.

Montana Youth Court Act — adult and youth defined, 41-5-103.

Hard-to-place child defined, 53-4-303.

41-1-102. Periods of minority — how calculated. The periods specified in 41-1-101 must be calculated from the first minute of the day on which persons are born to the same minute of the corresponding day completing the period of minority.

History: En. Sec. 11, Civ. C. 1895; re-en. Sec. 3585, Rev. C. 1907; re-en. Sec. 5674, R.C.M. 1921; Cal. Civ. C. Sec. 26; re-en. Sec. 5674, R.C.M. 1935; R.C.M. 1947, 64-102.

Cross-References

Compensation and support of person after attaining majority, 40-6-218.

When parental authority ceases, 40-6-234.

Who may not be personal representative, 72-3-501.

41-1-103. Unborn children. A child conceived but not yet born is to be deemed an existing person, so far as may be necessary for its interests in the event of its subsequent birth.

History: En. Sec. 13, Civ. C. 1895; re-en. Sec. 3587, Rev. C. 1907; re-en. Sec. 5675, R.C.M. 1921; Cal. Civ. C. Sec. 29; Field Civ. C. Sec. 12; re-en. Sec. 5675, R.C.M. 1935; R.C.M. 1947, 64-103.

Cross-References

Expected child — intent to release or consent — petition and notice, 40-6-127.

Legitimacy of children born after dissolution of marriage, 40-6-202.

Afterborn heirs, 72-2-212.

Part 2

Civil Actions Concerning Minors

Part Cross-References

Owner's civil liability for negligent operation of boat, 23-2-505.

Montana Rules of Civil Procedure relating to children, Rules 17(c), 27(a)(2), 40, M.R.Civ.P. (see Title 25, ch. 20).

Suits on behalf of minors, 27-1-323, 27-1-512, 27-1-514.

Minors allowed to make marriage settlements, 40-2-315.

41-1-201. Liability of minors for wrongs — exemplary damages. A minor is civilly liable for a wrong done by him but is not liable in exemplary damages unless at the time of the act he was capable of knowing that it was wrongful.

History: En. Sec. 24, Civ. C. 1895; re-en. Sec. 3598, Rev. C. 1907; re-en. Sec. 5686, R.C.M. 1921; Cal. Civ. C. Sec. 41; re-en. Sec. 5686, R.C.M. 1935; R.C.M. 1947, 64-113(part).

Cross-References

Pupils — duties and sanctions, 20-5-201.

Civil liability of owner for negligent operation of boat, 23-2-505.

When exemplary damages allowed, 27-1-221.

Destruction of property by minor — liability of parents, 40-6-237.

41-1-202. Enforcement of minor's rights. A minor may enforce his rights by civil action or other legal proceedings in the same manner as a person of full age, except that a guardian must conduct the same.

History: En. Sec. 25, Civ. C. 1895; re-en. Sec. 3599, Rev. C. 1907; re-en. Sec. 5687, R.C.M. 1921; Cal. Civ. C. Sec. 42; Field Civ. C. Sec. 25; re-en. Sec. 5687, R.C.M. 1935; R.C.M. 1947, 64-114.

Cross-References

Appointment of guardian ad litem, 25-5-301.

Right of minor to bring civil action or other proceeding, 27-1-511.

Action by parent or guardian for injury to or death of child or ward, 27-1-512.

Who may sue for whose seduction, 27-1-514.

Statute of Limitations — when person entitled to bring action is under a disability, 27-2-401.

Child as party to paternity action, 40-6-110.

Delegation of powers by parent or guardian, 72-5-103.

Guardians of minors, Title 72, ch. 5, part 2.

Protection of property of minors and persons under disability, Title 72, ch. 5, part 4.

Part 3

Power to Contract

Part Cross-References

Who may contract, 28-2-201.

Contracts in restraint of marriage generally void — exception for minors, 28-2-706.

Agency, 28-10-104, 28-10-704.

Power to contract — purchase of insurance by minors, 33-15-103.

41-1-301. Delegation of power by minors forbidden. A minor cannot give a delegation of power.

History: En. Sec. 16, Civ. C. 1895; re-en. Sec. 3590, Rev. C. 1907; re-en. Sec. 5678, R.C.M. 1921; Cal. Civ. C. Sec. 33; Field Civ. C. Sec. 15; re-en. Sec. 5678, R.C.M. 1935; R.C.M. 1947, 64-105.

Cross-References

Who may appoint an agent, who may be an agent, 28-10-104.

Agency — applicability of laws relating to capacity to contract, 28-10-704.

41-1-302. Contracts of minors — disaffirmance. A minor may make a conveyance or other contract in the same manner as any other person, subject only to his power of disaffirmance under the provisions of this chapter and to the provisions of Title 40, chapter 1.

History: En. Sec. 17, Civ. C. 1895; re-en. Sec. 3591, Rev. C. 1907; re-en. Sec. 5679, R.C.M. 1921; Cal. Civ. C. Sec. 34; Field Civ. C. Sec. 16; re-en. Sec. 5679, R.C.M. 1935; R.C.M. 1947, 64-106.

Cross-References

Contracts by minors, 28-2-201.

Contracts in restraint of marriage generally void — exception for minors, 28-2-706.

Marriage settlement by minors, 40-2-315.

Obligations of children, Title 40, ch. 6, part 3.

41-1-303. Capacity of minors to borrow money for education. Any person who, being a minor, contracts to borrow money to defray the expenses of attending any college or university or other institution of higher education beyond high school shall have full legal capacity to act in his own behalf and shall have all the rights, powers, and privileges and be subject to the obligations of persons of full age with respect to any such contracts.

History: En. Sec. 1, Ch. 34, L. 1963; R.C.M. 1947, 64-106.1.

Cross-References

Student financial assistance, Title 20, ch. 26.

Who may contract, 28-2-201.

Applicability of laws relating to capacity to contract — agency, 28-10-704.

Obligations of parents for the support and education of their children, 40-6-211.

41-1-304. When minors may disaffirm. In all cases other than those specified by 41-1-303, 41-1-305, and 41-1-306, the contract of a minor may, upon restoring the consideration to the party from whom it was received, be disaffirmed by the minor himself, either before his majority or within a reasonable time afterwards, or in case of his death within that period, by his heirs or personal representatives.

History: En. Sec. 18, Civ. C. 1895; re-en. Sec. 3592, Rev. C. 1907; re-en. Sec. 5680, R.C.M. 1921; Cal. Civ. C. Sec. 35; Field Civ. C. Sec. 17; re-en. Sec. 5680, R.C.M. 1935; R.C.M. 1947, 64-107; amd. Sec. 1, Ch. 29, L. 1979.

Cross-References

Who may contract, 28-2-201.

Personal representative — power to recover property which is subject of void or voidable transfer, 72-3-614.

Limitation of action on bond, 72-13-102.

Limitation of action for recovery of property sold by guardian, 72-13-103.

41-1-305. Minor cannot disaffirm contract for necessaries. A minor cannot disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for his support or that of his family, entered into by him when not under the care of a parent or guardian able to provide for him or them.

History: En. Sec. 19, Civ. C. 1895; re-en. Sec. 3593, Rev. C. 1907; re-en. Sec. 5681, R.C.M. 1921; Cal. Civ. C. Sec. 36; Field Civ. C. Sec. 18; re-en. Sec. 5681, R.C.M. 1935; R.C.M. 1947, 64-108(part).

Cross-References

Contracts of persons entirely without understanding, 28-2-202.

When person of unsound mind cannot disaffirm contract, 28-2-204.

Liability for acts or debts of spouse, 40-2-106.

Earnings and accumulations of married person, 40-2-205.

Necessity determined by standard of living, 40-2-210.

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

When parent liable for necessaries supplied to child, 40-6-215.

Duty of child to support indigent parents, 40-6-301.

41-1-306. Minor cannot disaffirm certain obligations. A minor cannot disaffirm an obligation, otherwise valid, entered into by him under the express authority or direction of a statute or when he has been granted limited emancipation, including a specific right to enter into contracts, under 41-3-406 and 41-3-408.

History: En. Sec. 20, Civ. C. 1895; re-en. Sec. 3594, Rev. C. 1907; re-en. Sec. 5682, R.C.M. 1921; Cal. Civ. C. Sec. 37; Field Civ. C. Sec. 19; re-en. Sec. 5682, R.C.M. 1935; R.C.M. 1947, 64-109; amd. Sec. 6, Ch. 564, L. 1983.

Compiler's Comments

1983 Amendment: At end of section added "or when he has been granted limited emancipation, including a specific right to enter into contracts, under 41-3-406 and 41-3-408".

Cross-References

Power to contract — purchase of insurance by minors, 33-15-103.

Marriage settlement by minors, 40-2-315.

Obligations of children, Title 40, ch. 6, part 3.

Discrimination — specific limits on justification, 49-2-403.

Part 4

Validity of Consent to Medical Treatment

Part Cross-References

Consent in general, Title 28, ch. 2, part 3.

Circumstances which affect validity of apparent consent, Title 28, ch. 2, part 4.

Health provisions relating to children, 50-1-202, 50-5-101, 50-15-101, 50-15-108, 50-15-109, 50-15-203, 50-15-302, 50-15-303, 50-17-110, 50-30-102, 50-30-201 through 50-30-220, 50-53-102.

Medical assistance for children, 53-6-101 through 53-6-104.

Treatment of developmentally disabled, Title 53, ch. 20, part 1.

Treatment of seriously mentally ill, Title 53, ch. 21, part 1.

41-1-401. Health professional defined. Health professional as used in this part shall include only those persons licensed in Montana as physicians, psychiatrists, psychologists, or dentists.

History: En. 69-6105.1 by Sec. 6, Ch. 312, L. 1974; R.C.M. 1947, 69-6105.1.

Cross-References

Licensing — practice of medicine, Title 37, ch. 3, part 3.

Licensing — dentists, Title 37, ch. 4, part 3.

Psychologists — licensing, Title 37, ch. 17, part 3.

41-1-402. Validity of consent of minor for health services. (1) The consent to the provision of medical or surgical care or services by a hospital, public clinic, or the performance of medical or surgical care or services by a physician licensed to practice medicine in this state may be given by a minor who professes or is found to meet any of the following descriptions:

(a) a minor who is or was ever married or has had a child or graduated from high school or is emancipated;

(b) a minor who has been separated from his parent, parents, or legal guardian for whatever reason and is supporting himself by whatever means;

(c) a minor who professes or is found to be pregnant or afflicted with any reportable communicable disease, including venereal disease, or drug and substance abuse, including alcohol. This self-consent only applies to the prevention, diagnosis, and treatment of those conditions specified in this subsection. The self-consent in the case of pregnancy, venereal disease, and drug and substance abuse also obliges the health professional, if he accepts the responsibility for treatment, to counsel the minor by himself or by referral to another health professional for counseling.

(d) a minor who needs emergency care, including transfusions, without which his health will be jeopardized. If emergency care is rendered, the parent, parents, or legal guardian shall be informed as soon as practical except under the circumstances mentioned in this subsection (1).

(2) A minor who has had a child may give effective consent to health service for his child.

(3) A minor may give consent for health care for his spouse if his spouse is unable to give consent by reason of physical or mental incapacity.

History: En. Sec. 1, Ch. 189, L. 1969; amd. Sec. 1, Ch. 312, L. 1974; amd. Sec. 23, Ch. 100, L. 1977; R.C.M. 1947, 69-6101.

Cross-References

When parental authority ceases, 40-6-234.

Emergency medical services, Title 50, ch. 6.

Venereal disease, Title 50, ch. 18, part 1.

Pregnancy — serological testing, Title 50, ch. 19, part 1.

Mentally ill — voluntary admission of minors, 53-21-112.

Alcoholism and drug dependence, Title 53, ch. 24.

41-1-403. Release of information by physician. (1) A treating physician or other health professional may, but shall not be obligated to, inform the spouse, parent, custodian, or guardian of any such minor in the circumstances as enumerated in 41-1-402 of any treatment given or needed when:

(a) in the judgment of the health professional, severe complications are present or anticipated;

(b) major surgery or prolonged hospitalization is needed;

(c) failure to inform the parent, parents, or legal guardian would seriously jeopardize the safety and health of the minor patient, younger siblings, or the public;

(d) to inform them would benefit the minor's physical and mental health and family harmony; or

(e) the hospital desires a third-party commitment to pay for services rendered or to be rendered.

(2) Notification or disclosure to the spouse, parent, parents, or legal guardian by the health professional shall not constitute libel or slander, a violation of the right of privacy, a violation of the rule of privileged communication, or any other legal basis of liability. When the minor is found not to be pregnant or not afflicted with venereal disease or not suffering from a drug- or substance-abuse, including alcohol, then no information with respect to any appointment, examination, test, or other health procedure shall be given to the parent, parents, or legal guardian, if they have not been already informed as permitted in this part, without the consent of the minor.

History: En. Sec. 2, Ch. 189, L. 1969; amd. Sec. 2, Ch. 312, L. 1974; R.C.M. 1947, 69-6102.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Privileges, Art. V, Montana Rules of Evidence (see Title 26, ch. 10).

Libel and slander, Title 27, ch. 1, part 8.

Criminal defamation, 45-8-212.

Confidentiality of health care information, Title 50, ch. 16, part 3.

41-1-404. Financial responsibility of minor. Consent of the minor shall not be subject to later disaffirmance or revocation because of minority. The spouse, parent, parents, or legal guardian of a consenting minor shall not be liable for payment for such service unless the spouse, parent, parents, or legal guardian have expressly agreed to pay for such care. Minors so consenting for such health services shall thereby assume financial responsibility for the cost of said services, except those who are proven unable to pay and who receive the services in public institutions. If the minor is covered by health insurance, payment may be applied for services rendered.

History: **En. Sec. 3, Ch. 189, L. 1969; amd. Sec. 3, Ch. 312, L. 1974; R.C.M. 1947, 69-6103.**

Cross-References

Purchase of insurance by minors, 33-15-103.

Insurance claims and benefits, Title 33, ch. 15, part 5.

When parent not liable for support furnished child, 40-6-216.

Minor not to disaffirm certain obligations, 41-1-306.

41-1-405. Emergencies and special situations. (1) Any health professional may render or attempt to render emergency service or first aid, medical, surgical, dental, or psychiatric treatment, without compensation, to any injured person or any person regardless of age who is in need of immediate health care when, in good faith, the professional believes that the giving of aid is the only alternative to probable death or serious physical or mental damage.

(2) Any health professional may render nonemergency services to minors for conditions which will endanger the health or life of the minor if services would be delayed by obtaining consent from spouse, parent, parents, or legal guardian.

(3) No consent shall be required of any minor who does not possess the mental capacity or who has a physical disability which renders him incapable of giving his consent and who has no known relatives or legal guardians, if a physician determines the health service should be given.

(4) Self-consent of minors shall not apply to sterilization or abortion.

History: **En. Sec. 4, Ch. 189, L. 1969; amd. Sec. 4, Ch. 312, L. 1974; R.C.M. 1947, 69-6104.**

Cross-References

Limits on liability for emergency care rendered at scene of accident or emergency, 27-1-714.

Consent in general, Title 28, ch. 2, part 3.

Exemptions from licensing requirements — emergencies, 37-3-103.

Montana Abortion Control Act, Title 50, ch. 20, part 1.

41-1-406. Psychiatric or psychological counseling under urgent circumstances. When executed by a minor, the consent to the providing of psychiatric or psychological counseling by a physician or psychologist licensed to practice in this state, under circumstances when the need for such counseling is urgent in the opinion of the physician or psychologist involved because of danger to the life, safety, or property of a minor or of other person or persons and the consent of the spouse, parent, custodian, or guardian of the minor cannot be obtained within a reasonable time to offset the danger to life or safety, shall be as valid and binding as if the minor had achieved majority. That is, such minor has the same legal capacity to act and the same legal obligations with regard to the giving of such consent as a person of full legal age and capacity, and such consent may not be subject to later disaffirmance by reason of such minority. The consent of no other person or persons (including but not limited to a spouse, parent, custodian, or guardian) is necessary in order to authorize the psychiatric or psychological counseling of such minor. However, no parent may be obligated for the cost of such counseling without his consent.

History: **En. Sec. 1, Ch. 315, L. 1971; amd. Sec. 24, Ch. 100, L. 1977; R.C.M. 1947, 69-6106.**

Cross-References

Consent in general, Title 28, ch. 2, part 3.

When parent not liable for support furnished child, 40-6-216.

Endangering the welfare of children, 45-5-622.

41-1-407. Immunity and responsibility of psychologist, physician, or health care facility. (1) No physician, surgeon, dentist, or health or mental health care facility may be compelled against their best judgment to treat a minor on his own consent.

(2) Nothing contained in this section shall be construed to relieve any physician, surgeon, dentist, or health or mental health care facility from liability for negligence in the diagnosis and treatment rendered such minor.

(3) In any case arising under the provisions of 41-1-406, the physician or licensed psychologist who provides the psychiatric or psychological counseling services shall incur no civil or criminal liability by reason of having provided the counseling services, but such immunity shall not apply to any negligent acts or omissions.

History: (1), (2)En. Sec. 5, Ch. 189, L. 1969; amd. Sec. 5, Ch. 312, L. 1974; Sec. 69-6105, R.C.M. 1947; (3)En. Sec. 2, Ch. 315, L. 1971; Sec. 69-6107, R.C.M. 1947; R.C.M. 1947, 69-6105, 69-6107.

Cross-References

Liability for negligence as well as willful acts, 27-1-701.

Comparative negligence, 27-1-702.

CHAPTER 2

CHILD LABOR

Part 1 — Prohibited Employment of Children

Section
41-2-101. Employment of children prohibited — when.
41-2-102 through 41-2-110 reserved.
41-2-111. Liability of parent.
41-2-112. Record of children under the age of sixteen years.
41-2-113. Age certificates.
41-2-114. Enforcement.
41-2-115 through 41-2-120 reserved.
41-2-121. Penalties.

Chapter Cross-References

Duties of Department of Labor and Industry, 39-1-102.

Cooperation with federal government, 39-1-104.

Unemployment insurance — exclusion from definition of employment — child employed by parent, 39-51-204.

Workers' compensation coverage of minor employee, 39-71-602.

Workers' compensation benefits to minors, 39-71-2203.

Sheltered workshops, Title 53, ch. 7, part 2.

Part 1

Prohibited Employment of Children

Part Cross-References

Students — exclusion from PERS, 19-3-403.

Employment defined, 39-2-101.

Exclusions from minimum wage provisions, 39-3-406.

41-2-101. Employment of children prohibited — when. Any person, company, firm, association, or corporation engaged in business in this state or any agent, officer, foreman, or other employee having control or management of employees or having the power to hire or discharge employees who shall knowingly employ or permit to be employed any child under the age of 16 years to render or perform any service or labor, whether under contract of employment or otherwise, in, on, or about any mine; mill; smelter; workshop; factory; steam, electric, hydraulic, or compressed-air railroad; or passenger or freight elevator or where any machinery is operated or for any telegraph, telephone, or messenger company or in any occupation not herein enumerated which is known to be dangerous or unhealthful or which may be in any way detrimental to the morals of said child shall be guilty of a misdemeanor and punishable as hereinafter provided.

History: En. Sec. 1, Ch. 99, L. 1907; Sec. 1746, Rev. C. 1907; re-en. Sec. 3095, R.C.M. 1921; re-en. Sec. 3095, R.C.M. 1935; R.C.M. 1947, 10-201.

Cross-References

Department of Labor and Industry to enforce laws relating to child labor, 39-1-102.

Cooperation with federal government, 39-1-104.

Bartenders, waiters, and waitresses, age of employment, 39-2-306.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

41-2-102 through 41-2-110 reserved.

41-2-111. Liability of parent. Any parent, guardian, or other person having the care, custody, or control of any child under the age of 16 years who shall permit, suffer, or allow any such child to work or perform service for any person, company, firm, association, or corporation doing business in this state or who shall permit or allow any such child over whom he has such care, custody, or control to retain such employment as is prohibited in 41-2-101, whether under contract of employment or not, shall be guilty of a misdemeanor and punishable as hereinafter provided.

History: En. Sec. 2, Ch. 99, L. 1907; Sec. 1747, Rev. C. 1907; re-en. Sec. 3096, R.C.M. 1921; re-en. Sec. 3096, R.C.M. 1935; R.C.M. 1947, 10-202.

Cross-References

Labor law — immediate family defined, 39-33-102.

Custody, services, and earnings of child, 40-6-221.

Wages of minors, 40-6-236.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

41-2-112. Record of children under the age of sixteen years. The commissioner of labor and industry shall compile and preserve in his office from reports made to him by the county superintendents of schools, as otherwise provided, a full and complete list of the name, age, date of birth, and sex of each child and the names of the parents or guardians of each child under the age of 16 years who is now or may hereafter become a resident of this state, and such list shall be the official record of the age of children in this state.

History: En. Sec. 3, Ch. 99, L. 1907; Sec. 1748, Rev. C. 1907; re-en. Sec. 3097, R.C.M. 1921; re-en. Sec. 3097, R.C.M. 1935; R.C.M. 1947, 10-203.

Cross-References

Department of Labor and Industry — head, 2-15-1701.

County Superintendent of Schools — powers and duties, 20-3-205.

41-2-113. Age certificates. Upon obtaining the age of 16 years any child may make application to the commissioner of labor and industry for an age certificate, which must be presented to any employer with whom the child seeks employment. The employer, if such employment be given, must countersign the certificate and return it to the commissioner, who shall keep it on file in his office. Any person, firm, company, association, or corporation who employs or permits to be employed in any occupation prohibited by 41-2-101 any child without such certificate showing the child to be at least 16 years of age is guilty of a misdemeanor and punishable as hereinafter provided should such child prove to be less than 16 years of age.

History: En. Sec. 4, Ch. 99, L. 1907; Sec. 1749, Rev. C. 1907; re-en. Sec. 3098, R.C.M. 1921; re-en. Sec. 3098, R.C.M. 1935; amd. Sec. 1, Ch. 100, L. 1977; R.C.M. 1947, 10-204.

Cross-References

Duties of Department of Labor and Industry, 39-1-102.

Contents of apprenticeship agreement, 39-6-106.

Misdemeanor defined, 45-2-101.

41-2-114. Enforcement. To enforce this part the commissioner of labor and industry and each county attorney shall, each upon his own volition or upon the sworn complaint of any reputable citizen that this part is being violated, make prosecutions for such violations.

History: En. Sec. 5, Ch. 99, L. 1907; Sec. 1750, Rev. C. 1907; re-en. Sec. 3099, R.C.M. 1921; re-en. Sec. 3099, R.C.M. 1935; amd. Sec. 2, Ch. 100, L. 1977; R.C.M. 1947, 10-205.

Cross-References

County Attorney — prosecutorial duties, 7-4-2712.

41-2-115 through 41-2-120 reserved.

41-2-121. Penalties. Every person, firm, company, association, or corporation who violates any of the provisions of this part shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $25 or more than $500 or by imprisonment in the county jail for a period of not less than 30 days or more than 6 months or by both such fine and imprisonment.

History: En. Sec. 6, Ch. 99, L. 1907; Sec. 1751, Rev. C. 1907; re-en. Sec. 3100, R.C.M. 1921; re-en. Sec. 3100, R.C.M. 1935; R.C.M. 1947, 10-206.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

CHAPTER 3

CHILD ABUSE, NEGLECT, AND DEPENDENCY

Part 1 — General

Section

41-3-101. Declaration of policy.
41-3-102. Definitions.
41-3-103. Jurisdiction and venue.
41-3-104. Renumbered 41-3-1122.
41-3-105. Renumbered 41-3-1125.
41-3-106. Prosecution of offenders.
41-3-107. Interagency cooperation.
41-3-108. Child protective teams.

Part 2 — Reports and Investigations

41-3-201. Reports.
41-3-202. Action on reporting.
41-3-203. Immunity from liability.
41-3-204. Admissibility and preservation of evidence.
41-3-205. Confidentiality.
41-3-206. Procedure in case of child's death.
41-3-207. Penalty for failure to report.
41-3-208. Rulemaking authority.

Part 3 — Protective Care

41-3-301. Emergency protective service.
41-3-302. Responsibility of providing protective services.
41-3-303. Guardian ad litem.

Part 4 — Abuse, Neglect, or Dependency Proceedings

41-3-401. Abuse, neglect, and dependency petitions.
41-3-402. Petition for temporary investigative authority and protective services.
41-3-403. Order for immediate protection of youth.
41-3-404. Adjudicatory hearing — temporary disposition.
41-3-405. Combined with 41-5-805, renumbered 41-3-1123.
41-3-406. Dispositional hearing.
41-3-407. Combined with 41-5-806, renumbered 41-3-1124.
41-3-408. Limited emancipation.

Part 5 — Foster Homes and Other Private Institutions (Renumbered by Sec. 31, Ch. 465, L. 1983)

Part 6 — Parent-Child Legal Relationship Termination

41-3-601. Short title.
41-3-602. Purpose.
41-3-603. Definitions.
41-3-604 through 41-3-606 reserved.
41-3-607. Petition for termination — separate hearing — right to counsel — no jury trial.
41-3-608. Notice.
41-3-609. Criteria for termination.
41-3-610. Review following termination.
41-3-611. Effect of decree.
41-3-612. Appeals.

Part 7 — Montana Children's Trust Fund

41-3-701. Child abuse and neglect prevention program.
41-3-702. Children's trust fund account — nonsupplantation of funds.
41-3-703. Gifts and grants to program.
41-3-704. Program costs.

Parts 8 through 10 reserved

Part 11 — Youth Residential Services

41-3-1101. Establishment of substitute care for youth.
41-3-1102. Definitions.
41-3-1103. Powers and duties of department.
41-3-1104. Aftercare facilities.
41-3-1105. Transfer of custody to private agency — reports.
41-3-1106. Allocation of money to judicial districts.

41-3-1107 through 41-3-1110 reserved.
41-3-1111. Taking into custody.
41-3-1112. Petition for placement in facility or home.
41-3-1113. Authority of judge to commit youth.
41-3-1114. Continuing jurisdiction of youth court.
41-3-1115. Foster care review committee.
41-3-1116 through 41-3-1120 reserved.
41-3-1121. Foster care payments for youth court placements.
41-3-1122. Payment for support of youth in need of care, youth in need of supervision, or delinquent youth — reimbursement by county.
41-3-1123. Investigation of parents' or guardians' financial ability — financial status report.
41-3-1124. Order for financial support.
41-3-1125. Recovery from parents or guardianship assets — division between state and county.
41-3-1126 through 41-3-1130 reserved.
41-3-1131. Power of nonprofit corporations to establish homes and to receive facilities and funds.
41-3-1132. Governmental contracts with nonprofit organizations.
41-3-1133 through 41-3-1140 reserved.
41-3-1141. License required.
41-3-1142. Issuance of license — authority of issuing agency.
41-3-1143. Penalty for failure to obtain license.

Chapter Cross-References

Justifiable use of force with respect to children, 45-3-104, 45-3-107.

Custodial interference, 45-5-304.

Incest, 45-5-507.

Provisions generally applicable to sexual crimes, 45-5-511.

Aggravated promotion of prostitution, 45-5-603.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

Unlawful transactions with children, 45-5-623.

Unlawful possession of an intoxicating substance by children, 45-5-624.

Sexual abuse of children, 45-5-625.

Abortion — written notice to spouse or parent required, 50-20-107.

Welfare provisions relating to children and families, 53-2-101, 53-2-201, 53-2-206, 53-2-610, 53-2-611; Title 53, ch. 3.

Aid to dependent children, Title 53, ch. 4, part 2.

Part 1

General

41-3-101. Declaration of policy. (1) It is hereby declared to be the policy of the state of Montana to:

(a) insure that all youth are afforded an adequate physical and emotional environment to promote normal development;

(b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;

(c) achieve these purposes in a family environment whenever possible; and

(d) preserve the unity and welfare of the family whenever possible.

(2) It is the policy of this state to provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for their care and protection. It is intended that the mandatory reporting of such cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life wherever appropriate.

History: (1)En. 10-1300 by Sec. 1, Ch. 328, L. 1974; Sec. 10-1300, R.C.M. 1947; (2)En. Sec. 1, Ch. 178, L. 1965; amd. Sec. 1, Ch. 292, L. 1973; Sec. 10-901, R.C.M. 1947; redes. 10-1303

by Sec. 14, Ch. 328, L. 1974; Sec. 10-1303, R.C.M. 1947; R.C.M. 1947, 10-1300, 10-1303; amd. Sec. 1, Ch. 543, L. 1979.

Cross-References

Obligations of parents for the support and education of their children, 40-6-211.

Remedy for parental abuse, 40-6-233.

When parental authority ceases, 40-6-234.

Use of force by parent, guardian, or teacher, 45-3-107.

41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Child" or "youth" means any person under 18 years of age.

(2) An "abused or neglected child" means a child whose normal physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of his parent or other person responsible for his welfare.

(3) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or mental injury, including injuries sustained as a result of excessive corporal punishment;

(b) commits or allows to be committed a sexual assault against the child or exploits the child or allows the child to be exploited for sexual purposes or commits or allows to be committed the act of sexual abuse of children as defined in subsection (1) of 45-5-625;

(c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or health care, though financially able to do so or offered financial or other reasonable means to do so;

(d) abandons the child by leaving him under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or by willfully surrendering physical custody for a period of 6 months and during that period does not manifest to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(e) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parents have failed.

(4) "Adequate health care" means any medical or nonmedical remedial health care, including the prevention of the withholding of medically indicated treatment, permitted or authorized under state law.

(5) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions. However, the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(a) the infant is chronically and irreversibly comatose;

(b) the provision of such treatment would:

(i) merely prolong dying;

(ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(iii) otherwise be futile in terms of the survival of the infant; or

(c) the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane. For purposes of this subsection, "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children over 1 year of age.

(6) "Threatened harm" means imminent risk of harm.

(7) "A person responsible for a child's welfare" means the child's parent, guardian, or foster parent; an employee of a public or private residential institution, facility, home, or agency; or any other person legally responsible for the child's welfare in a residential setting.

(8) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

(9) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or psychological functioning.

(10) "Dependent youth" means a youth:

(a) who is abandoned;

(b) who is without parents or guardian or not under the care and supervision of a suitable adult;

(c) who has no proper guidance to provide for his necessary physical, moral, and emotional well-being;

(d) who is destitute;

(e) who is dependent upon the public for support; or

(f) whose parent or parents have voluntarily relinquished custody of the child and whose legal custody has been transferred to a licensed agency.

(11) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in this section.

(12) "Supervision" means the authority granted by a youth court or by a voluntary agreement of a parent to determine the foster care placement of a child and the length of stay of a child in foster care and provide for the needs of a child under subsection (1) of 41-3-1122.

(13) "Department" means the department of social and rehabilitation services provided for in 2-15-2201.

(14) "Limited emancipation" means a status conferred on a dependent youth by a court after a dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

History: En. 10-1301 by Sec. 2, Ch. 328, L. 1974; amd. Sec. 18, Ch. 100, L. 1977; R.C.M. 1947, 10-1301; amd. Sec. 2, Ch. 543, L. 1979; amd. Sec. 2, Ch. 511, L. 1981; amd. Sec. 31, Ch. 465, L. 1983; amd. Sec. 1, Ch. 564, L. 1983; amd. Sec. 1, Ch. 626, L. 1985.

Compiler's Comments

1985 Amendment: In (4) inserted "including the prevention of the withholding of medically indicated treatment"; and inserted (5).

1983 Amendments: Chapter 465, in (11) (now (12)), changed 41-3-104 to 41-3-1122. Chapter 564 inserted (13) (now (14)).

1981 Amendment: Added "or commits or allows to be committed the act of sexual abuse of children as defined in subsection (1) of 45-5-625" at the end of (3)(b); added the language relating to willful surrender of custody at the end of (3)(d); inserted subsection (3)(e); and added subsections (11) and (12) (now (12) and (13)).

Cross-References

Admittance of child to school, 20-5-101.

Compulsory attendance and excuses, 20-5-103.

Form, execution, and revocation of releases — termination of parents' or guardian's rights, 40-6-135.

Obligations of parents, Title 40, ch. 6, part 2.

When parent may bring action for the exclusive control of children — decree, 40-6-223.

Remedy for parental abuse, 40-6-233.

Parent allowed to relinquish services and custody of child, 40-6-235.

Consent required for adoption, 40-8-111.

Sexual assault, 45-5-502.

Sexual intercourse without consent, 45-5-503.

Incest, 45-5-507.

Provisions generally applicable to sexual crimes, 45-5-511.

Aggravated promotion of prostitution, 45-5-603.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

Unlawful transactions with children, 45-5-623.

Unlawful possession of intoxicating substance by children, 45-5-624.

Obscenity, 45-8-201.

Criminal possession of dangerous drugs, 45-9-102.

41-3-103. Jurisdiction and venue. (1) In all matters arising under this chapter, the youth court shall have concurrent jurisdiction with the district court over:

(a) all youths who are within the state of Montana for any purpose;

(b) any youth or other person subject to this chapter who under a temporary or permanent order of the court has voluntarily or involuntarily removed himself from the state or the jurisdiction of the court; or

(c) any person who is alleged to have abused, neglected, or caused the dependency of a youth who is in the state of Montana for any purpose.

(2) Venue shall be determined pursuant to 41-5-204.

History: En. 10-1302 by Sec. 3, Ch. 328, L. 1974; R.C.M. 1947, 10-1302.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Child custody jurisdiction, 40-4-211.

Dispositional hearing, 41-3-406.

Montana Youth Court — jurisdiction of the court, 41-5-203.

41-3-104. Renumbered 41-3-1122. Sec. 31, Ch. 465, L. 1983.

41-3-105. Renumbered 41-3-1125. Sec. 31, Ch. 465, L. 1983.

41-3-106. Prosecution of offenders. (1) If the evidence indicates violation of the criminal code, it shall be the responsibility of the county attorney to file appropriate charges against the alleged offender.

(2) District court shall have original jurisdiction under this section.

History: En. 10-1322 by Sec. 12, Ch. 328, L. 1974; R.C.M. 1947, 10-1322.

Cross-References

District Court — original jurisdiction, 3-5-302.

County Attorney — prosecutorial duties, 7-4-2712.

Incest, 45-5-507.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

Sexual abuse of children, 45-5-625.

Criminal liability of parent or guardian for use of firearms by children under fourteen, 45-8-345.

41-3-107. Interagency cooperation. To effectuate the purposes of this chapter, the county welfare department shall cooperate with and shall seek the cooperation and involvement of all appropriate public and private agencies, including health, education, social services, and law enforcement agencies; juvenile courts; and any other agency, organization, or program providing or concerned with human services related to the prevention, identification, or treatment of child abuse or neglect. Such cooperation and involvement may not include joint case management but may include joint policy planning, public education, information services, staff development, and other training.

History: En. Sec. 4, Ch. 543, L. 1979.

Cross-References

Board of Public Education — powers and duties, 20-2-121.

Montana Youth Court Act — declaration of purpose, 41-5-102.

General powers and duties of Department of Health and Environmental Sciences, 50-1-202.

Duties of Department of Social and Rehabilitation Services — child rehabilitation, 53-4-113.

Department of Social and Rehabilitation Services to assist other agencies, 53-4-116.

41-3-108. Child protective teams. The county attorney or the county welfare department may convene one or more temporary or permanent interdisciplinary child protective teams. These teams may assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to the child and his family. The supervisor of child protective services of the county welfare department or his designee shall serve as the team's coordinator. Members shall include a social worker, a member of a local law enforcement agency, a representative of the medical profession, and a county attorney.

History: En. Sec. 5, Ch. 543, L. 1979.

Cross-References

Duty to strengthen child welfare services, 53-4-112.

Department of Social and Rehabilitation Services — child rehabilitation, 53-4-113.

Duties of County Board of Public Welfare, 53-4-121.

Part 2

Reports and Investigations

41-3-201. Reports. (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect that a child known to them in their professional or official capacity is an abused or neglected child, they shall report the matter promptly to the department of social and rehabilitation services or its local affiliate, which then shall notify the county attorney of the county where the child resides.

(2) Professionals and officials required to report are:

(a) physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) Christian Science practitioner and religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, operator or employee of any registered or licensed day-care or substitute care facility, or any other operator or employee of a child-care facility;

(f) foster care, residential, or institutional worker; or

(g) a peace officer or other law enforcement official.

(3) Any person may make a report under this section if he knows or has reasonable cause to suspect that a child is abused or neglected.

(4) No person listed in subsection (2) may refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege if the person came into possession of such information as a result of his treatment of the child.

(5) The reports referred to under this section shall contain:

(a) the names and addresses of the child and his or her parents or other persons responsible for his or her care;

(b) to the extent known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries;

(c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of person or persons responsible therefor; and

(d) the facts which led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter.

History: En. Sec. 2, Ch. 178, L. 1965; amd. Sec. 2, Ch. 292, L. 1973; Sec. 10-902, R.C.M. 1947; redes. 10-1304 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1304; amd. Sec. 6, Ch. 543, L. 1979; amd. Sec. 3, Ch. 511, L. 1981.

Compiler's Comments

1981 Amendment: Substituted present subsection (2)(e) for former subsection (2)(e), which read: "(e) a social worker, licensed day-care center or any other licensed child-care facility;".

Cross-References

Duties of teacher — nonpayment for failure to comply, 20-4-301.

Doctor-patient privilege, 26-1-805.

Adjudicatory hearing — temporary disposition, 41-3-404.

Department of Social and Rehabilitation Services to assist other agencies, 53-4-116.

Standards for day care, 53-4-504.

41-3-202. Action on reporting. (1) Upon receipt of a report as required by 41-3-201 that a child is or has been abused or neglected, a social worker or the county attorney or a peace officer shall promptly conduct a thorough investigation into the home of the child involved or any other place where the child is present, into the circumstances surrounding the injury of the child, and into all other nonfinancial matters which in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care.

(2) The social worker is responsible for assessing the family and planning for the child. If the child is treated at a medical facility, the social worker, county attorney, or peace officer shall, consistent with reasonable medical practice, have the right of access to the child for interviews, photographs, and securing physical evidence and have the right of access to relevant hospital and medical records pertaining to the child.

(3) If from the investigation it appears that the child suffered abuse or neglect, the department shall provide protective services to the child and may provide protective services to any other child under the same care. The department will advise the county attorney of its investigation.

(4) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department. The department shall maintain a record system containing child abuse and neglect cases.

(5) Any person reporting abuse or neglect which involves acts or omissions on the part of a public or private residential institution, home, facility, or agency shall be responsible for ensuring that the report is made to the department of social and rehabilitation services, its local affiliate, and the county attorney of the county in which the facility is located.

History: En. Sec. 3, Ch. 178, L. 1965; amd. Sec. 3, Ch. 292, L. 1973; Sec. 10-903, R.C.M. 1947; redes. 10-1305 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1305; amd. Sec. 8, Ch. 543, L. 1979; amd. Sec. 3, Ch. 567, L. 1979.

Cross-References

Remedy for parental abuse, 40-6-233.

Emergency protective service, 41-3-301.

Responsibility of providing protective services, 41-3-302.

Records and reports required of health care facilities — confidentiality, 50-5-106.

Child rehabilitation — duties of Department, 53-4-113.

41-3-203. Immunity from liability. Anyone investigating or reporting any incident of child abuse or neglect, participating in resulting judicial proceedings, or furnishing hospital or medical records as required by 41-3-202 is immune from any liability, civil or criminal, that might otherwise be incurred or imposed, unless the person acted in bad faith or with malicious purpose.

History: En. Sec. 4, Ch. 178, L. 1965; Sec. 10-904, R.C.M. 1947; redes. 10-1306 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1306; amd. Sec. 9, Ch. 543, L. 1979.

Cross-References

Immunity and responsibility of psychologist, physician, or health care facility, 41-1-407.

Records and reports required of health care facilities — confidentiality, 50-5-106.

41-3-204. Admissibility and preservation of evidence. (1) In any proceeding resulting from a report made pursuant to the provisions of this chapter or in any proceeding where the report or its contents are sought to be introduced into evidence, the report or its contents or any other fact related to the report or to the condition of the child who is the subject of the report shall not be excluded on the ground that the matter is or may be the subject of a privilege related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803.

(2) Any person or official required to report under 41-3-201 may take or cause to be taken photographs of the area of trauma visible on a child who is the subject of a report. The cost of photographs taken under this section shall be paid by the county child protective service agency.

(3) When any person required to report under 41-3-201 finds visible evidence that a child has suffered abuse or neglect, he must include in his report either a written description or photographs of the evidence.

(4) A physician, either in the course of his providing medical care to a minor or after consultation with child protective services, the county attorney, or a law enforcement officer may require x-rays to be taken when in his professional opinion there is a need for radiological evidence of suspected abuse or neglect. X-rays may be taken under this section without the permission of the parent or guardian. The cost of the x-rays ordered and taken under this section shall be paid by the county child protective service agency.

(5) All written, photographic, or radiological evidence gathered under this section shall be sent to the local child protective services agency at the time the written confirmation report is sent or as soon thereafter as is possible.

History: En. Sec. 5, Ch. 178, L. 1965; Sec. 10-905, R.C.M. 1947; redes. 10-1307 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1307; amd. Sec. 10, Ch. 543, L. 1979.

Cross-References

Contents of writings, recordings, and photographs, Art. X, Montana Rules of Evidence (see Title 26, ch. 10).

Validity of consent of minor for health services, 41-1-402.

Responsibility of providing protective services, 41-3-302.

41-3-205. Confidentiality. (1) The case records of the department of social and rehabilitation services and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect shall be kept confidential except as provided by this section. Any person who permits or encourages the unauthorized dissemination of their contents is guilty of a misdemeanor.

(2) Records may be used by interagency interdisciplinary child protective teams as authorized under 41-3-108 for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan. Members of the team are required to keep information about the subject individuals confidential.

(3) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds such disclosure to be necessary for the fair resolution of an issue before it.

(4) Nothing in this section is intended to affect the confidentiality of criminal court records or records of law enforcement agencies.

History: En. 10-1308 by Sec. 4, Ch. 328, L. 1974; R.C.M. 1947, 10-1308; amd. Sec. 11, Ch. 543, L. 1979.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Doctor-patient privilege, 26-1-805.

Confidential communications by student to employee of educational institution, 26-1-809.

Child protective teams, 41-3-108.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

41-3-206. Procedure in case of child's death. (1) Any person or official required to report by law who has reasonable cause to suspect that a child has died as a result of child abuse or neglect shall report his suspicion to the appropriate medical examiner or law enforcement officer. Any other person who has reasonable cause to suspect that a child has died as a result of child abuse or neglect may report his suspicion to the appropriate medical examiner or law enforcement officer.

(2) The medical examiner or coroner shall investigate the report and submit his findings, in writing, to the local law enforcement agency, the appropriate county attorney, the local child protective service, and, if the person making the report is a physician, the physician.

History: En. Sec. 7, Ch. 543, L. 1979.

Cross-References

Homicide, Title 45, ch. 5, part 1.

41-3-207. Penalty for failure to report. (1) Any person, official, or institution required by law to report known or suspected child abuse or neglect who fails to do so or who prevents another person from reasonably doing so is civilly liable for the damages proximately caused by such failure or prevention.

(2) Any person or official required by law to report known or suspected child abuse or neglect who purposely or knowingly fails to report known child

abuse or neglect or purposely or knowingly prevents another person from doing so is guilty of a misdemeanor.

History: En. Sec. 15, Ch. 543, L. 1979; amd. Sec. 1, Ch. 367, L. 1985.

Compiler's Comments

1985 Amendment: Near middle of (1) after "neglect", deleted "or required to perform any other act"; and inserted (2).

Cross-References

Damages, Title 27, ch. 1, part 2.

Measure of damages, Title 27, ch. 1, part 3.

Liability for negligence as well as willful acts, 27-1-701.

Misdemeanor — no penalty specified, 46-18-212.

41-3-208. Rulemaking authority. The department of social and rehabilitation services shall adopt rules to govern the procedures used by department personnel and by employees of county welfare departments in preparing and processing reports and in making investigations authorized by this chapter or 41-3-1123.

History: En. Sec. 1, Ch. 567, L. 1979; amd. Sec. 31, Ch. 465, L. 1983.

Compiler's Comments

1983 Amendment: Changed 41-5-805 to 41-3-1123.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 3

Protective Care

Part Cross-References

Establishment of youth guidance center, 7-16-2102 through 7-16-2104.

41-3-301. Emergency protective service. (1) Any child protective social worker of the department of social and rehabilitation services, the county welfare department, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place him in a protective facility. The department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having legal custody of the youth at the time the placement is made or as soon thereafter as possible.

(2) No child who has been removed from his home or any other place for his protection or care may be placed in a jail.

(3) A petition shall be filed within 48 hours of emergency placement of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents.

(4) The department of social and rehabilitation services and the county welfare department shall make such necessary arrangements for the youth's well-being as are required prior to the court hearing.

History: En. 10-1309 by Sec. 5, Ch. 328, L. 1974; amd. Sec. 19, Ch. 100, L. 1977; R.C.M. 1947, 10-1309; amd. Sec. 12, Ch. 543, L. 1979; amd. Sec. 1, Ch. 659, L. 1985.

Compiler's Comments

1985 Amendment: In (1) inserted last sentence.

Cross-References

Remedy for parental abuse, 40-6-233.

Declaration of policy, 41-3-101.

Action on reporting, 41-3-202.

Abuse, neglect, and dependency petitions, 41-3-401.

Foster homes and other private institutions, Title 41, ch. 3, part 5.

Taking into custody, 41-3-1111.

41-3-302. Responsibility of providing protective services. (1) The department of social and rehabilitation services and the county welfare department shall have the primary responsibility to provide the protective services authorized by this chapter and shall have the authority pursuant to this chapter to take temporary or permanent custody of a child when ordered to do so by the court, including the right to give consent to adoption.

(2) The county welfare department shall respond to emergency reports of known or suspected child abuse or neglect 24 hours a day, 7 days a week.

History: En. 10-1315 by Sec. 11, Ch. 328, L. 1974; R.C.M. 1947, 10-1315; amd. Sec. 13, Ch. 543, L. 1979; amd. Sec. 4, Ch. 511, L. 1981.

Compiler's Comments

1981 Amendment: Deleted ", limited," after "temporary" in (1).

Cross-References

Remedy for parental abuse, 40-6-233.

When parental authority ceases, 40-6-234.

Action on reporting, 41-3-202.

Order for immediate protection of youth, 41-3-403.

Taking into custody, 41-3-1111.

County departments of public welfare, Title 53, ch. 2, part 3.

Child rehabilitation — duties of department, 53-4-113.

41-3-303. Guardian ad litem. (1) In every judicial proceeding the court shall appoint for any child alleged to be abused or neglected a guardian ad litem. When necessary the guardian ad litem may serve at public expense.

(2) The guardian ad litem is charged with the representation of the child's interests. The guardian ad litem has the following general duties:

(a) to conduct such investigation as he considers necessary to ascertain the facts constituting the alleged abuse or neglect;

(b) to interview or observe the child who is the subject of the proceeding;

(c) to have access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child, his siblings, and parents or custodians;

(d) to make written reports to the court concerning the child's welfare;

(e) to appear and participate in all proceedings to the degree necessary to adequately represent the child and make recommendations to the court concerning the child's welfare; and

(f) to perform such other duties as directed by the court.

History: En. Sec. 14, Ch. 543, L. 1979; amd. Sec. 1, Ch. 384, L. 1985.

Compiler's Comments

1985 Amendment: At end of first sentence of (1) after "guardian ad litem", deleted "who, whenever possible, shall be an attorney"; and inserted (2).

Cross-References

Guardian ad litem, 25-5-301.

Representation of child, 40-4-205.

When parental authority ceases, 40-6-234.

Enforcement of minor's rights, 41-1-202.

Appointment of guardian ad litem, 41-5-512.

Guardians of minors, Title 72, ch. 5, part 2.

Part 4

Abuse, Neglect, or Dependency Proceedings

41-3-401. Abuse, neglect, and dependency petitions. (1) The county attorney, attorney general, or an attorney hired by the county welfare department or office of human services shall be responsible for filing all petitions alleging abuse, neglect, or dependency. The county attorney or attorney general, or an attorney hired by the county welfare department or office of human services with the written consent of the county attorney or attorney general, may require all state, county, and municipal agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as may be necessary. Investigations as to financial status may not be made prior to the adjudicatory hearing provided for in 41-3-404.

(2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition. Such petitions shall be given preference by the court in setting hearing dates and must be heard within 20 days of the filing of the petition.

(3) A petition alleging abuse, neglect, or dependency is a civil action brought in the name of the state of Montana. The rules of civil procedure shall apply except as herein modified. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, shall be served personally with a copy of the petition and summons at least 5 days prior to the date set for hearing. If such person or agency resides out of state or is not found within the state, the rules of civil procedure relating to service of process in such cases shall apply.

(5) In the event service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party where in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice shall be given to the minor parent's parents or guardian, and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear.

(8) Except where the proceeding is instituted or commenced by a representative of the department of social and rehabilitation services, a citation shall be issued and served upon a representative of the department prior to the court hearing.

(9) The petition shall:

(a) state the nature of the alleged abuse, neglect, or dependency;

(b) state the full name, age, and address of the youth and the name and address of his parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services;

(b) temporary legal custody;

(c) termination of the parent-child legal relationship;

(d) any combination of the above or such other relief as may be required for the best interest of the youth.

(11) The petition may be modified for different relief at any time within the discretion of the court.

(12) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party.

History: En. 10-1310 by Sec. 6, Ch. 328, L. 1974; amd. Sec. 20, Ch. 100, L. 1977; R.C.M. 1947, 10-1310; amd. Sec. 4, Ch. 567, L. 1979; amd. Sec. 5, Ch. 511, L. 1981; amd. Sec. 2, Ch. 659, L. 1985.

Compiler's Comments

1985 Amendment: In (1) near beginning, after "county attorney", inserted "attorney general, or an attorney hired by the county welfare department or office of human services", in second sentence at beginning substituted "The county attorney or attorney general, or an attorney hired by the county welfare department or office of human services with the written consent of the county attorney or attorney general" for "He"; in (2) near end of second sentence, after "dates", inserted "and must be heard within 20 days of the filing of the petition"; deleted former (10)(d) and (e) that read: "(d) permanent legal custody, including the right to consent to adoption;

(e) appointment of guardian ad litem"; in (12) near middle, after "appoint", deleted "a guardian ad litem for the youth or"; and deleted former (13) that read: "This section does not apply to a petition for temporary investigative authority and protective services."

1981 Amendment: Substituted present subsection (10)(c) for former subsection (10)(c), which read: "(c) limited legal custody".

Cross-References

Guardian ad litem — appointment, 25-5-301.

Montana Rules of Civil Procedure, Title 25, ch. 20.

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Representation of child, 40-4-205.

Best interest of child, 40-4-212, 40-6-130.

Consent required for adoption, 40-8-111.

Enforcement of minor's rights, 41-1-202.

Prosecution of offenders — abuse, neglect, dependency, 41-3-106.

Action on reporting, 41-3-202.

Parent-child legal relationship termination, Title 41, ch. 3, part 6.

Appointment of guardian ad litem, 41-5-512.

Child rehabilitation — duties of department, 53-4-113.

Guardians of minors, Title 72, ch. 5, part 2.

41-3-402. Petition for temporary investigative authority and protective services. (1) In cases where it appears that a youth is abused or neglected or is in danger of being abused or neglected, the county attorney, attorney general, or an attorney hired by the county welfare department or office of human services may file a petition for temporary investigative authority and protective services.

(2) A petition for temporary investigative authority and protective services shall state the specific authority requested and the facts establishing probable cause that a youth is abused or neglected or is in danger of being abused or neglected.

(3) The petition for temporary investigative authority and protective services shall be supported by an affidavit signed by the county attorney, attorney general, county welfare department attorney, or office of human services attorney or a department of social and rehabilitation services report stating in detail the facts upon which the request is based.

History: En. 10-1311 by Sec. 7, Ch. 328, L. 1974; amd. Sec. 21, Ch. 100, L. 1977; R.C.M. 1947, 10-1311(1) thru (3); amd. Sec. 3, Ch. 659, L. 1985.

Compiler's Comments

1985 Amendment: In (1) near middle after "county attorney" inserted "or an attorney hired by the county welfare department or office of human services"; and in (3) near middle after "county attorney", inserted "attorney general, county welfare department attorney, or office of human services attorney".

Cross-References

Affidavits, Title 26, ch. 1, part 10.

Action on reporting, 41-3-202.

41-3-403. Order for immediate protection of youth. (1) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court may issue an order granting such relief as may be required for the immediate protection of the youth.

(b) The order, along with the petition and supporting documents, shall be served by a peace officer or a representative of the department of social and rehabilitation services on the person or persons named therein. When the youth is placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian, or other person having legal custody of the youth, at the time the placement is made or as soon thereafter as possible.

(c) The order shall require the person served to comply immediately with the terms thereof or to appear before the court issuing the order on the date specified and show cause why he has not complied with the order. The show cause hearing must be conducted within 20 days of the issuance of the order by the judge or a master appointed by the judge. The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of the order. Except as otherwise provided herein, the rules of civil procedure shall apply.

(d) Upon a failure to comply or show cause the court may hold the person in contempt or place temporary legal custody of the youth with the department of social and rehabilitation services until further order.

(2) The court may grant the following kinds of relief:

(a) right of entry by a peace officer or department of social and rehabilitation services worker;

(b) medical and psychological evaluation of youth or parents, guardians, or person having legal custody;

(c) require the youth, parents, guardians, or person having legal custody to receive counseling services;

(d) place the youth in temporary medical facility or facility for protection of the youth;

(e) require the parents, guardian, or other person having custody to furnish such services as the court may designate;

(f) such other temporary disposition as may be required in the best interest of the youth.

History: En. 10-1311 by Sec. 7, Ch. 328, L. 1974; amd. Sec. 21, Ch. 100, L. 1977; R.C.M. 1947, 10-1311(4), (5); amd. Sec. 4, Ch. 659, L. 1985.

Compiler's Comments

1985 Amendment: In (1)(b), near beginning after "order", inserted "along with the petition and supporting documents", and inserted second sentence; and in (1)(c), in first sentence, near middle after "terms thereof or", deleted "upon failure to so comply", and inserted second and third sentences.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Montana Rules of Civil Procedure, Title 25, ch. 20.

Masters, Rule 53, M.R.Civ.P. (see Title 25, ch. 20).

Best interests of child, 40-4-212, 40-6-130.

Remedy for parental abuse, 40-6-233.

Psychiatric or psychological counseling under urgent circumstances, 41-1-406.

Action on reporting, 41-3-202.

Responsibility of providing protective services, 41-3-302.

Taking into custody, 41-3-1111.

Child rehabilitation — duties of Department, 53-4-113.

Department to accept custody of children committed by courts, 53-4-115.

41-3-404. Adjudicatory hearing — temporary disposition. (1) In the adjudicatory hearing on a petition under 41-3-401, the court shall determine whether the youth is a youth in need of care and ascertain, as far as possible, the cause.

(2) The court shall hear evidence regarding the residence of the youth, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the youth.

(3) In all civil and criminal proceedings relating to abuse, neglect, or dependency, none of the privileges related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803, apply.

(4) (a) If the court determines that the youth is not an abused, neglected, or dependent child, the petition shall be dismissed and any order made pursuant to 41-3-403 shall be vacated.

(b) If the court determines that the youth is an abused, neglected, or dependent child, the court shall set a date for a dispositional hearing to be conducted within 30 days and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-403(2).

History: En. 10-1312 by Sec. 8, Ch. 328, L. 1974; R.C.M. 1947, 10-1312; amd. Sec. 19, Ch. 543, L. 1979; amd. Sec. 5, Ch. 567, L. 1979; amd. Sec. 5, Ch. 659, L. 1985.

Compiler's Comments

1985 Amendment: In (1) near beginning, after "41-3-401", deleted "or 41-3-402"; and in (4)(b), in first sentence, after "hearing", inserted "to be conducted within 30 days", and deleted former second sentence that read: "The dispositional hearing shall be scheduled as soon as practicable."

Cross-References

When parent may bring action for the exclusive control of children — decree, 40-6-223.

Remedy for parental abuse, 40-6-233.

Admissibility and preservation of evidence, 41-3-204.

Payment for support of youth in need of care — reimbursement by county, 41-3-1122.

41-3-405. Combined with 41-5-805, renumbered 41-3-1123. Sec. 31, Ch. 465, L. 1983.

41-3-406. Dispositional hearing. If a youth is found to be abused, neglected, or dependent under 41-3-404, the court after the dispositional hearing may enter its judgment making any of the following dispositions to protect the welfare of the youth:

(1) permit the youth to remain with his parents or guardian subject to those conditions and limitations the court may prescribe;

(2) grant an order of limited emancipation to a youth who is 16 years of age or older as provided in 41-3-408;

(3) transfer legal custody to any of the following:

(a) department of social and rehabilitation services;

(b) a child-placing agency willing and able to assume responsibility for the education, care, and maintenance of the youth and which is licensed or otherwise authorized by law to receive and provide care of the youth; or

(c) a relative or other individual who, after study by a social service agency designated by the court, is found by the court to be qualified to receive and care for the youth;

(4) order any party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling;

(5) order such further care and treatment as the court may deem in the best interest of the youth.

History: En. 10-1314 by Sec. 10, Ch. 328, L. 1974; R.C.M. 1947, 10-1314; amd. Sec. 7, Ch. 567, L. 1979; amd. Sec. 170, Ch. 575, L. 1981; amd. Sec. 3, Ch. 564, L. 1983; amd. Sec. 6, Ch. 659, L. 1985.

Compiler's Comments

1985 Amendment: In (2) at end substituted "41-3-408" for "[section 5]"; and deleted former (2) through (5) that read: "(2) Whenever the court vests legal custody in any agency, institution, or department, it shall transmit with the dispositional judgment copies of any medical report and such other clinical, predisposition, or other reports and information as may be pertinent to the care and treatment of the youth.

(3) Any youth found to be abused, neglected, or dependent may be committed or the court may make such other disposition of the child as the court deems best for his social and physical welfare. The form of commitment shall be as follows:

ORDER OF COMMITMENT

State of Montana)
) ss.
County of ....)

In the district court for the .... Judicial District.

On the .... day of ...., 19.., ..., minor of this county, was charged on the petition of ...., county attorney of .... County, with being an abused or neglected or dependent child. Upon due proof I find that it is for the best interests of the child that he be taken from the custody of his parents, guardian, or other person having custody of him.

The names, addresses, and occupations of the parents are:

Name	Address	Occupation
....	....	....
....	....	....

The child's guardian is ....

The child is in the custody of ....

It is ordered that .... be committed to .... until discharged as provided by law.

Witness my hand this .... day of ...., A.D. 19...

....
Judge

(4) Transfer of legal custody of a child shall include guardianship of any assets or estate of the child, unless otherwise specified by the court.

(5) Except in cases in which the court permanently terminates all parental rights or rights of the guardian of the youth, the court shall retain jurisdiction over the case and may subsequently modify any disposition ordered pursuant to this section."

1983 Amendment: Inserted (1)(b) (now (2)).

1981 Amendment: In former (3) (now deleted), deleted reference to the Montana children's center.

Cross-References

Remedy for parental abuse, 40-6-233.

When parental authority ceases, 40-6-234.

Jurisdiction and venue, 41-3-103.

Responsibility of providing protective services, 41-3-302.

Order for financial support, 41-3-1124.

Recovery from parents or guardianship assets — division between state and county, 41-3-1125.

Endangering the welfare of children, 45-5-622.

Department to accept custody of children committed by courts, 53-4-115.

Guardians of minors, Title 72, ch. 5, part 2.

41-3-407. Combined with 41-5-806, renumbered 41-3-1124. Sec. 31, Ch. 465, L. 1983.

41-3-408. Limited emancipation. (1) The court, after the dispositional hearing provided for in 41-3-406, may, upon the request of a youth who is 16 years of age or older, enter an order granting limited emancipation to the youth.

(2) Limited emancipation may be granted only if the court has found:

(a) that limited emancipation is in the youth's best interests;

(b) that the youth desires limited emancipation;

(c) that there exists no public interest compelling denial of limited emancipation;

(d) that the youth has, or will reasonably obtain, money sufficient to pay for financial obligations incurred as a result of limited emancipation;

(e) that the youth, as shown by prior conduct and preparation, understands and may be expected to responsibly exercise those rights and responsibilities incurred as a result of limited emancipation;

(f) that the youth has graduated or will continue to diligently pursue graduation from high school, unless circumstances clearly compel deferral of education; and

(g) that the youth will undergo periodic counseling with an appropriate advisor.

(3) An order of limited emancipation must specifically set forth the rights and responsibilities that are being conferred upon the youth. These may include but are not limited to one or more of the following:

(a) the right to live independently of in-house supervision;

(b) the right to live in housing of the youth's choice;

(c) the right to directly receive and expend money to which the youth is entitled and to conduct his own financial affairs;

(d) the right to enter into contractual agreements and incur debts;

(e) the right to obtain access to medical treatment and records upon the youth's own authorization; and

(f) the right to obtain a license to operate equipment or perform a service.

(4) An order of limited emancipation must include a provision requiring that the youth make periodic reports to the court upon terms prescribed by the court.

(5) If no order for contribution is made under 41-3-1124 and the court determines that a youth to whom limited emancipation is granted does not have sufficient funds to finance transition to limited emancipated status, the court may order the department to provide such funds, not to exceed $500, directly to the youth. The youth shall account to the court for the disposition of such funds and shall repay all such money to the department within 1 year of the order of limited emancipation unless the court for cause orders an extension.

(6) The court, on its own motion or on the motion of any parties to the dispositional hearing, may modify or revoke the order upon a showing that:

(a) the youth has committed a material violation of the law;

(b) the youth is failing to diligently pursue graduation from high school;

(c) the youth has violated a condition of the limited emancipation order;

(d) the best interests of the youth are no longer served by limited emancipation; or

(e) the youth has discontinued periodic counseling with approved advisors.

(7) The department shall mail a copy of this part to all high school counseling offices.

History: En. Sec. 5, Ch. 564, L. 1983.

Cross-References

Schools — compulsory attendance and excuses, 20-5-103.

Obligations of parents, Title 40, ch. 6, part 2.

Minor cannot disaffirm certain obligations, 41-1-306.

Validity of consent to medical treatment, Title 41, ch. 1, part 4.

Definitions — limited emancipation, 41-3-102.

Part 5

Foster Homes and Other Private Institutions (Renumbered by Sec. 31, Ch. 465, L. 1983)

Part Compiler's Comments

Renumbered Sections:

41-3-501. Renumbered 41-3-1102(3), (4). Sec. 31, Ch. 465, L. 1983.

41-3-502. Renumbered 41-3-1141. Sec. 31, Ch. 465, L. 1983.

41-3-503. Renumbered 41-3-1142. Sec. 31, Ch. 465, L. 1983.

41-3-504. Renumbered 41-3-1143. Sec. 31, Ch. 465, L. 1983.

Part 6

Parent-Child Legal Relationship Termination

Part Cross-References

Relinquishment of parental rights, 40-6-135.

Adoption — effect of final decree, 40-8-125.

41-3-601. Short title. This part may be cited as the "Parent-Child Legal Relationship Termination Act of 1981".

History: En. Sec. 1, Ch. 420, L. 1981.

41-3-602. Purpose. This part provides procedures and criteria by which the parent-child legal relationship may be terminated by a court if the relationship is not in the best interest of the child. The termination of the parent-child legal relationship provided for in this part is to be used in those situations where there is a determination that a child is abused, neglected, or dependent, as defined in 41-3-102.

History: En. Sec. 2, Ch. 420, L. 1981.

Cross-References

Best interest of child, 40-4-212.

41-3-603. Definitions. As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Guardian ad litem" means a person appointed to represent a child who is the subject of a petition for the termination of the parent-child legal relationship.

(2) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in 41-3-102.

(3) "Parent-child legal relationship" means the legal relationship that exists between a child and his birth or adoptive parents as provided in Title 40, chapter 6, part 2, unless that relationship has been terminated by competent judicial decree as provided in this part or in 40-6-135 or in 40-6-234.

(4) "Treatment plan" means a written agreement between the department or court and the parents that includes action that must be taken to resolve

the condition or conduct of the parents that resulted in the need for protective services for the child. The treatment plan may involve other parties, if necessary, for protective services.

History: En. Sec. 3, Ch. 420, L. 1981; amd. Sec. 1, Ch. 1, L. 1983; amd. Sec. 1, Ch. 388, L. 1985.

Compiler's Comments

1985 Amendment: In (1) substituted "petition" for "written motion".

1983 Amendment: In (3), changed "40-6-124" to "40-6-135"; and in (4) after "department", deleted "[of social and rehabilitation services]".

Cross-References

Guardian ad litem, Title 25, ch. 5, part 3.

Enforcement of minor's rights, 41-1-202.

41-3-604 through 41-3-606 reserved.

41-3-607. Petition for termination — separate hearing — right to counsel — no jury trial. (1) The termination of a parent-child legal relationship shall be considered only after the filing of a petition pursuant to 41-3-401 alleging the factual grounds for termination. Termination of a parent-child legal relationship shall be considered at a dispositional hearing held pursuant to 41-3-406, following or together with an adjudicatory hearing held pursuant to 41-3-404, within 180 days after the filing of the petition.

(2) After the county attorney, attorney general, or an attorney hired by the county welfare department or office of human services files a petition for termination of a parent-child relationship pursuant to this part, parents shall be advised of the right to counsel, and counsel shall be appointed in accordance with 41-3-401(12).

(3) A guardian ad litem shall be appointed to represent the child's best interests in any hearing determining the involuntary termination of the parent-child legal relationship. The guardian ad litem shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any counsel requested by the parent.

(4) There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship.

History: En. Sec. 4, Ch. 420, L. 1981; amd. Sec. 2, Ch. 388, L. 1985.

Compiler's Comments

1985 Amendment: In (1) near end, after "41-3-404", inserted remainder of sentence; in (2) after "county attorney", inserted "attorney general, or an attorney hired by the county welfare department or office of human services"; and in (3) at beginning of first sentence, deleted "An attorney, who whenever possible shall be the child's previously appointed" and inserted "A", and near beginning of second sentence changed "attorney" to "guardian ad litem".

Cross-References

Trial by jury, Art. II, sec. 26, Mont. Const.

Guardian ad litem, Title 25, ch. 5, part 3.

Trial by jury, Rule 39, M.R.Civ.P. (see Title 25, ch. 20).

41-3-608. Notice. Before a termination of the parent-child legal relationship based on abandonment may be ordered, the court shall determine whether the rules of civil procedure relating to service of process on the parents have been followed. If the parents were not served personally, the petitioner must file an affidavit stating what efforts have been made to locate the parent or parents of the child. The affidavit must be filed at least 10 days prior to the hearing.

History: En. Sec. 5, Ch. 420, L. 1981.

Cross-References

Service of process and other papers, Title 25, ch. 3.

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding that the circumstances contained in subsection (1)(a), (1)(b), or (1)(c), as follows, exist:

(a) the parents have relinquished the child pursuant to 40-6-135;

(b) the child has been abandoned by his parents as set forth in 41-3-102(3)(d); or

(c) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court must enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making such determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child caused by the parent;

(d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child;

(e) present judicially ordered long-term confinement of the parent;

(f) the injury or death of a sibling due to proven parental abuse or neglect; and

(g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's physical, mental, and emotional conditions.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) two medical doctors submit testimony that the parent is so severely mentally ill that such person cannot assume the role of parent;

(b) the parent is incarcerated for more than 1 year and such treatment plan is not practical considering the incarceration; or

(c) the death of a sibling caused by abuse or neglect by the parent has occurred.

History: En. Sec. 6, Ch. 420, L. 1981; amd. Sec. 7, Ch. 15, L. 1985; amd. Sec. 3, Ch. 388, L. 1985.

Compiler's Comments

1985 Amendments: Chapters 15 and 388 in (1)(a) substituted "40-6-135" for "40-6-132 through 40-6-134".

Chapter 388 inserted (4).

Cross-References

Best interest of child, 40-4-212.

UPA — grounds for termination of father's rights, 40-6-129.

41-3-610. Review following termination. (1) At the conclusion of a hearing in which the court orders termination of the parent-child legal relationship, the court shall order that a review hearing be held within 180 days following the date of the termination to determine if the child has been permanently placed.

(2) At the review hearing, the agency or individual vested with the custody of the child shall report to the court whether the plan for permanent placement of the child has been accomplished. If the child is not in a permanent placement at the time of the review hearing, the guardian ad litem shall submit to the court a written report with recommendations, based upon an independent investigation, for disposition meeting the best interests of the child.

(3) The court may order the agency or individual vested with custody of the child to report, at appropriate intervals, on the status of the child until the plan for permanent placement of the child has been accomplished.

History: En. Sec. 7, Ch. 420, L. 1981; amd. Sec. 4, Ch. 388, L. 1985.

Compiler's Comments

1985 Amendment: In (1) near end, after "the termination", inserted remainder of sentence; and in (2) at beginning of second sentence, inserted "If the child is not in a permanent placement at the time of the review hearing".

41-3-611. Effect of decree. (1) An order for the termination of the parent-child legal relationship divests the child and the parents of all legal rights, powers, immunities, duties, and obligations with respect to each other as provided in Title 40, chapter 6, part 2, except the right of the child to inherit from the parent.

(2) An order or decree entered pursuant to this part may not disentitle a child to any benefit due him from any third person, including but not limited to any Indian tribe, agency, state, or the United States.

(3) After the termination of a parent-child legal relationship, the former parent is neither entitled to any notice of proceedings for the adoption of the child nor has any right to object to the adoption or to participate in any other placement proceedings held pursuant to 41-3-609.

History: En. Sec. 8, Ch. 420, L. 1981.

Cross-References

Consent required for adoption, 40-8-111.

Intestate succession, Title 72, ch. 2, part 2.

41-3-612. Appeals. Appeals of court orders or decrees made under this part shall be given precedence on the calendar of the supreme court over all other matters, unless otherwise provided by law.

History: En. Sec. 9, Ch. 420, L. 1981.

Cross-References

Montana Rules of Appellate Civil Procedure, Title 25, ch. 21.

Part 7

Montana Children's Trust Fund

Part Cross-References

Montana children's trust fund board, 2-15-2211.

Income tax deduction for contribution to state child abuse and neglect prevention program, 15-30-155 through 15-30-157.

41-3-701. *(Temporary)* **Child abuse and neglect prevention program.** (1) The Montana children's trust fund board, provided for in 2-15-2211, shall use the money in the children's trust fund account established by 41-3-702 to fund services and activities operated by nonprofit private or public community-based educational and service organizations, which services and activities relate solely to the prevention of child abuse and neglect.

(2) In administering the child abuse and neglect prevention program, the board shall:

(a) develop a state plan, priorities for funded services and activities, and criteria for the receipt of program funds;

(b) monitor the expenditure of funds by organizations receiving funds under this section;

(c) evaluate the effectiveness of services and activities funded under this section; and

(d) adopt rules necessary to implement this section and 41-3-703 and 41-3-704. *(Terminates January 1, 1990—sec. 13, Ch. 610, L. 1985.)*

History: En. Sec. 3, Ch. 610, L. 1985.

41-3-702. *(Temporary)* **Children's trust fund account — nonsupplantation of funds.** (1) There is a children's trust fund account in the state special revenue fund in the state treasury. The money in the account is allocated to the Montana children's trust fund board, provided for in 2-15-2211, for funding services and activities under and payment of administrative costs of the child abuse and neglect prevention program provided for in 41-3-701.

(2) Funds deposited in the children's trust fund account may be used only for the program authorized in 41-3-701 and may not be used to pay the expenses of any other program or service administered in whole or in part by the department of social and rehabilitation services. *(Terminates January 1, 1990—sec. 13, Ch. 610, L. 1985.)*

History: (1)En. Sec. 1, Ch. 610, L. 1985; (2)En. Sec. 6, Ch. 610, L. 1985.

Cross-References

Fund structure, 17-2-102.

41-3-703. *(Temporary)* **Gifts and grants to program.** The Montana children's trust fund board may accept contributions, gifts, and grants, in money or otherwise, to the child abuse and neglect prevention program. Monetary gifts, contributions, and grants must, upon receipt, be paid into the children's trust fund account established by 41-3-702. *(Terminates January 1, 1990—sec. 13, Ch. 610, L. 1985.)*

History: En. Sec. 4, Ch. 610, L. 1985.

41-3-704. *(Temporary)* **Program costs.** The costs incurred by the Montana children's trust fund board in administering the child abuse and neglect prevention program must be paid for with money from the children's trust fund account established by 41-3-702. The board shall keep costs to a minimum and use existing office space, personnel, equipment, and supplies of the department of social and rehabilitation services to the extent possible. *(Terminates January 1, 1990—sec. 13, Ch. 610, L. 1985.)*

History: En. Sec. 5, Ch. 610, L. 1985.

Parts 8 through 10 reserved

Part 11

Youth Residential Services

Part Cross-References

Foster care payments for Youth Court placements, 41-3-1121.

Place of shelter care or detention, 41-5-306.

Disposition of delinquent youth and youth in need of supervision, 41-5-523.

Relationship of foster homes, youth group homes, and community residential facilities to zoning, 76-2-412.

41-3-1101. Establishment of substitute care for youth. The legislature, in recognition of the wide and varied needs of youth in need of care, delinquent youth, and youth in need of supervision of this state and of the desirability of meeting these needs on a community level to the fullest extent possible, establishes by this part a system of substitute care to provide facilities and services for youth placed out of their homes and establishes a program to provide such facilities and services through local nonprofit corporations and the department of social and rehabilitation services.

History: En. Sec. 6, Ch. 465, L. 1983.

Cross-References

Duty to strengthen child welfare services, 53-4-112.

Montana Youth Treatment Center, Title 53, ch. 21, part 5.

41-3-1102. Definitions. For the purposes of this part, the following definitions apply:

(1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or more children or youth.

(2) "Department" means the department of social and rehabilitation services.

(3) "Operator of a youth care facility" means any person owning or operating a youth care facility into which he takes any child or children for the purpose of caring for them and maintaining them and for which care and maintenance he receives money or other consideration of value, and which child is neither his son, daughter, nor ward, except that this part shall not apply when any person accepts such care and custody of such child on a temporary basis and simply as a temporary accommodation for the parent or parents, guardian, or relative of such child.

(4) "Person" means any individual, partnership, voluntary association, or corporation.

(5) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who are removed from or without the care and supervision of their parents or guardian.

(6) "Youth care facility" means a facility, licensed in accordance with 41-3-1141 through 41-3-1143, in which substitute care is provided to youth and includes youth foster homes, youth group homes, and child-care agencies.

(7) "Youth foster home" means a youth care facility in which substitute care is provided to one to six children or youth other than the foster parents' own children, stepchildren, or wards.

(8) "Youth group home" means a youth care facility in which substitute care is provided to 7 to 12 children or youth.

History: (1), (2), (5) thru (9)En. Sec. 7, Ch. 465, L. 1983; (3), (4)En. Sec. 1, Ch. 178, L. 1947; Sec. 10-520, R.C.M. 1947; redes. 10-1316 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1316; amd. Sec. 3, Ch. 297, L. 1981; amd. Sec. 16, Ch. 465, L. 1983; MCA 1981, 41-3-501; redes. 41-3-1102 by Sec. 31(4), Ch. 465, L. 1983; amd. Sec. 1, Ch. 531, L. 1985.

Compiler's Comments

1985 Amendment: In (4) made minor changes in phraseology; deleted former (6) that defined "Treatment facility"; in (6) after "provided to youth", deleted "in need of care, youth in need of supervision, or delinquent youth"; and in (7) substituted "youth other than the foster parents' own children, stepchildren, or wards" for "youth to whom the foster parents are not related by blood, marriage, or adoption, or wardship".

1983 Amendment: In (3), changed "operator of a foster home or boarding home" to "operator of a youth care facility" and rearranged the definition; and after "operating" changed "home or institution" to "youth care facility".

1981 Amendment: Deleted "nor related to him by blood" after "nor ward" near the middle of (1) (now (3)); made minor changes in phraseology.

Cross-References

Definition of community residential facility, 76-2-411.

41-3-1103. Powers and duties of department. (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, youth group homes, and child-care agencies for youth in need of care, youth in need of supervision, and delinquent youth;

(b) exercise licensing authority over all youth foster homes, youth group homes, and child-care agencies;

(c) collect and disseminate information relating to youth in need of care, youth in need of supervision, and delinquent youth;

(d) provide for training of program personnel delivering services;

(e) in cooperation with the department of institutions and youth care facility providers, develop and implement standards for youth care facilities;

(f) apportion and allocate placement budgets to all judicial districts;

(g) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the breakdown of youth in need of care, youth in need of supervision, and delinquent youth by category in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements; and

(h) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youths in need of care, youths in need of supervision, and delinquent youths who require such treatment.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations or private organizations to provide facilities and services for youth in need of care, youth in need of supervision, and delinquent youth;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

(3) The department shall pay for room, board, clothing, personal needs, transportation, and treatment in youth foster care homes and youth group homes other than aftercare homes for youths committed to the department of institutions who need to be placed in such facilities. Youths committed to the department of institutions and placed in residential facilities other than those described above shall not be the financial responsibility of the department of social and rehabilitation services unless such placements have been approved in advance by the department of social and rehabilitation services.

History: En. Secs. 8, 17, Ch. 465, L. 1983; amd. Sec. 8, Ch. 15, L. 1985; amd. Sec. 1, Ch. 177, L. 1985; amd. Sec. 2, Ch. 531, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 15 deleted former (1)(g) that read: "seek public input on the plan prior to its adoption and implementation".

Chapter 177 inserted (1)(h); and in (2)(a) inserted "or private organizations".

Chapter 531 in first sentence of (3) substituted "treatment in youth foster care homes and youth group homes other than aftercare homes" for "treatment in district youth guidance homes, shelter care programs, and foster care homes".

Cross-References

Administrative duties of Department, 53-4-111.

41-3-1104. Aftercare facilities. The department of institutions may establish, maintain, and administer youth correction facilities, evaluation facilities, mental health facilities and services, aftercare programs, and aftercare facilities for the care, custody, and treatment of youth who have been committed to the department of institutions.

History: En. Sec. 26, Ch. 465, L. 1983; amd. Sec. 3, Ch. 531, L. 1985.

Compiler's Comments

1985 Amendment: Deleted former (2) that read: "Aftercare facilities are under the licensing authority of the department of institutions."

Cross-References

Establishment of juvenile correction facilities, 53-30-202.

Youth aftercare agreement, 53-30-226.

41-3-1105. Transfer of custody to private agency — reports. When the legal custody of a youth is vested in a public agency under the provisions of this part, the public agency may transfer physical custody of the youth to an appropriate private agency and may purchase care and treatment from the private agency if the private agency submits periodic reports to the public agency covering the care and treatment the youth is receiving and the youth's responses to that care and treatment. These reports shall be made as frequently as the public agency or the court deems necessary, but not less often than once each 6 months for each youth. The private agency shall also afford an opportunity for a representative of the public agency to examine or consult with the youth as frequently as the public agency deems necessary.

History: En. 10-1227 by Sec. 27, Ch. 329, L. 1974; R.C.M. 1947, 10-1227; MCA 1981, 41-5-804; redes. 41-3-1105 by Sec. 31(4), Ch. 465, L. 1983.

41-3-1106. Allocation of money to judicial districts. (1) The department shall allocate placement budgets, based upon historical placement patterns and current placement trends, to the judicial districts for the substitute care of youth in need of supervision or delinquent youth.

(2) The placement budgets may be monitored by a youth court committee as provided for in 41-5-105 or a foster care review committee as provided for in 41-3-1115.

History: En. Sec. 9, Ch. 465, L. 1983.

41-3-1107 through 41-3-1110 reserved.

41-3-1111. Taking into custody. (1) A youth may be taken into custody under the following circumstances:

(a) by a law enforcement officer pursuant to a lawful order or process of any court;

(b) by a law enforcement officer pursuant to a lawful arrest for violation of the law;

(c) by a law enforcement officer, agent of the department, county attorney, or a person or physician treating a youth when there is reason to believe the youth is a youth in need of care and that the residence of the youth or the custody by the person legally responsible for the youth presents an imminent danger to the life or health of the youth.

(2) The taking of a youth into custody is not an arrest except for the purpose of determining the validity of the taking under the constitution of Montana or the United States.

History: En. 10-1211 by Sec. 11, Ch. 329, L. 1974; R.C.M. 1947, 10-1211; MCA 1981, 41-5-302; redes. 41-3-1111 by Sec. 31(4), Ch. 465, L. 1983.

Cross-References

Due process of law, Art. II, sec. 17, Mont. Const.

Responsibility of providing protective services, 41-3-302.

Method of arrest, 46-6-104.

Arrest by a peace officer, Title 46, ch. 6, part 4.

Detention of youth who violates aftercare agreement, 53-30-228.

Hearing on alleged violation of aftercare agreement — right to appeal outcome, 53-30-229.

41-3-1112. Petition for placement in facility or home. Any person between the ages of 18 and 21 years who is still within the jurisdiction of the youth court or any person under the age of 18 years may petition the youth court of a district in which a youth care facility has been established to be placed in such a facility or in any other home approved by the court for any period of time up to the person's 21st birthday.

History: En. Sec. 23, Ch. 465, L. 1983.

41-3-1113. Authority of judge to commit youth. A youth court judge may in his discretion place a delinquent youth or a youth in need of supervision in a youth care facility for any period of time up to the child's 21st birthday, subject to the approval of the facility's sponsoring nonprofit corporation or association.

History: En. Sec. 24, Ch. 465, L. 1983.

Cross-References

Disposition of delinquent youth and youth in need of supervision, 41-5-523.

41-3-1114. Continuing jurisdiction of youth court. The youth court placing a delinquent youth or a child in need of supervision in a youth care facility retains continuing jurisdiction over the youth until the youth becomes 21 years of age or is otherwise discharged by order of the court.

History: En. Sec. 25, Ch. 465, L. 1983.

Cross-References

Retention of jurisdiction, 41-5-205.

41-3-1115. Foster care review committee. (1) In every judicial district the youth court judge, in consultation with the department, shall appoint a foster care review committee. The members of the committee must be willing to act without compensation. The committee shall be composed of not less than five or more than seven members. The members shall include:

(a) a representative of the department;

(b) a representative of the youth court;

(c) someone knowledgeable in the needs of children in foster care placements who is not employed by the department or the youth court;

(d) a representative of a local school district; and

(e) if there is one, the foster parent of the child whose care is under review. The foster parent's appointment is effective only for and during that review.

(2) When a child is in foster care under the supervision of the department or the youth court or if payment for care is made pursuant to 41-3-1122 or 41-3-1121(2), the committee shall conduct a review of the foster care status of the child. The review must be conducted within a time limit established by the department. The time limit must comply with federal law and may not be later than the 12-month anniversary date of the child's placement into foster care.

(3) The department shall provide the committee with guidelines for operation of the committee. Within 30 days of the foster care review, the committee shall provide the youth court and the department a written report of its findings and recommendations for further action by the youth court or the department.

(4) The department shall adopt rules necessary to carry out the purposes of this section.

(5) Because of the individual privacy involved, meetings of the committee, reports of the committee, and information on individuals' cases shared by committee members is confidential and subject to the confidentiality requirements of the department.

(6) The committee is subject to the call of the youth court judge to meet and confer with him on all matters pertaining to the foster care of a child before the youth court.

History: En. Sec. 2, Ch. 297, L. 1981; amd. Sec. 1, Ch. 201, L. 1983; MCA 1981, 41-5-807; amd. and redes. 41-3-1115 by Sec. 31, Ch. 465, L. 1983.

Compiler's Comments

1983 Amendment: Chapter 201, in (1), increased minimum committee membership from four to five; inserted (1)(e).

Chapter 465, in (2), changed "41-3-104" to "41-3-1122" and "41-5-801(2)" to "41-3-1121(2)".

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Duty to strengthen child welfare services, 53-4-112.

41-3-1116 through 41-3-1120 reserved.

41-3-1121. Foster care payments for youth court placements. (1) The youth court may establish procedures for finding, maintaining, and administering substitute care and foster homes approved by the court for youth within the provisions of this part.

(2) Pursuant to 41-3-1122, the department shall make a foster care payment for a child placed by the youth court if:

(a) the child is placed in a youth care facility licensed by the department or by an appropriate licensing authority from another state;

(b) the youth court enters into an agreement according to federal regulations with the department for the placement of children;

(c) the placement of the child is reviewed as required by 41-3-1115; and

(d) the youth court retains supervision of the child in placement.

History: En. 10-1236 by Sec. 36, Ch. 329, L. 1974; amd. Sec. 11, Ch. 100, L. 1977; amd. Sec. 12, Ch. 571, L. 1977; R.C.M. 1947, 10-1236; amd. Sec. 4, Ch. 297, L. 1981; amd. Sec. 10, Ch. 465, L. 1983; MCA 1981, 41-5-801; redes. 41-3-1121 by Sec. 31(4), Ch. 465, L. 1983; amd. Sec. 9, Ch. 15, L. 1985.

Compiler's Comments

1985 Amendment: In (1) changed "shelter care" to "substitute care".

1983 Amendment: In (2), substituted "make a foster care payment for a child placed" for "finance foster homes established"; substituted present (2)(a) for "the foster home is licensed by the department"; and deleted former (3), which read: "The licensed shelter care and foster homes established under this section shall be funded at a rate consistent with other shelter care and foster homes established for other purposes under law. Shelter care as defined by this chapter may be funded through state appropriation to the youth courts and the departments of institutions and social and rehabilitation services."

1981 Amendment: Substituted subsection (2) for "All foster homes established by the youth court which are licensed by the department of social and rehabilitation services shall be financed by the department as set forth in 53-2-201(1)(b)."

Cross-References

Detention and shelter care of youth, 41-5-305.

Place of shelter care or detention, 41-5-306.

41-3-1122. Payment for support of youth in need of care, youth in need of supervision, or delinquent youth — reimbursement by county. (1) Whenever a youth who is a youth in need of care, a youth in need of supervision, or a delinquent youth is placed by the youth court or the department in a youth care facility, the department shall pay, within the limits of the appropriation for that purpose, a foster care payment to the youth care facility at a rate established by the department for board, clothing, personal needs, treatment, and room of the youth.

(2) On or before the 20th of each month the department shall present a claim to the county of residence of the youth for no more than one-half the payments so made during the month. The county must make reimbursement to the department within 20 days after the claim is presented.

(3) The department shall conduct or arrange for the review required under 41-3-1115 of a youth placed in a youth care facility if the youth is placed under the supervision of the department or placed by the department or the department pays for the care of the youth as set forth in this section.

History: En. Sec. 1, Ch. 48, L. 1949; amd. Sec. 1, Ch. 194, L. 1965; amd. Sec. 1, Ch. 264, L. 1971; amd. Sec. 48, Ch. 121, L. 1974; Sec. 10-524, R.C.M. 1947; redes. 10-1320 by Sec. 14, Ch. 328, L. 1974; amd. Sec. 22, Ch. 100, L. 1977; R.C.M. 1947, 10-1320; amd. Sec. 3, Ch. 543,

L. 1979; amd. Sec. 1, Ch. 297, L. 1981; amd. Sec. 11, Ch. 465, L. 1983; MCA 1981, 41-3-104; redes. 41-3-1122 by Sec. 31(4), Ch. 465, L. 1983; amd. Sec. 4, Ch. 531, L. 1985.

Compiler's Comments

1985 Amendment: In (1) substituted present language for "Whenever agreements are entered into by the department or the court for placing a youth in need of care, a youth in need of supervision, or a delinquent youth in a youth care facility, the department shall pay by its check or draft each month from any funds appropriated for that purpose the entire amount agreed upon for board, clothing, personal needs, treatment, and room of the youth".

1983 Amendment: In (1), after "department" inserted "or the court", substituted "a youth in need of supervision, or a delinquent youth in a youth care facility" for "in a licensed family foster home, child care agency, group home, or treatment facility", and inserted "treatment" near end of subsection; in (3), substituted "youth care facility" for "licensed family foster home, child care agency, group home, or treatment facility".

1981 Amendment: Deleted "private" before "treatment facility" in (1); inserted "no more than" before "one-half the payments" in (2); added subsection (3); made minor changes in grammar.

Cross-References

Remedy for parental abuse, 40-6-233.

Foster care payments for Youth Court placements, 41-3-1121.

Financial responsibility — interstate placement of children, 41-4-102.

Montana Youth Court Act — place of shelter care or detention, 41-5-306.

Duty to strengthen child welfare services, 53-4-112.

41-3-1123. Investigation of parents' or guardians' financial ability — financial status report. (1) Whenever a disposition under 41-3-404, 41-5-403, 41-5-523, or 41-5-524 involves placement in a youth care facility and the department is responsible for all or part of the cost of such placement, the probation officer or the court shall notify the department and order the county welfare department in the youth's county of residence to conduct an investigation of the financial status of the youth's parents or guardianship assets. Following an adjudicatory hearing in which a youth is determined to be a delinquent youth or a youth in need of supervision, the court may order the county welfare department to conduct a financial status investigation.

(2) (a) Upon receipt of the order, the county welfare department shall make an investigation for the purpose of ascertaining the residence of the parents or guardian of the youth and the financial ability of the parents or the adequacy of the guardianship assets to pay the cost of supporting the youth:

(i) in the youth care facility; or

(ii) as a child of limited emancipation, as may be ordered under 41-3-406.

(b) A written report of the investigation shall be filed with the court having jurisdiction, the department of social and rehabilitation services, and the department of institutions, and a copy shall be sent to the parents or guardian of the youth or to any other party to the proceeding.

(3) A copy of the written report shall be provided to all parties to the proceeding before the time set for the dispositional hearing.

History: 41-3-405 En. 10-1313 by Sec. 9, Ch. 328, L. 1974; R.C.M. 1947, 10-1313(part); amd. Sec. 6, Ch. 567, L. 1979; 41-5-805 En. Sec. 11, Ch. 567, L. 1979; amd. Secs. 12, 13, Ch. 465, L. 1983; 41-3-405 and 41-5-805 combined by Sec. 31(3)(a), Ch. 465, L. 1983; redes. 41-3-1123 by Sec. 31(3)(c), Ch. 465, L. 1983; amd. Sec. 2, Ch. 564, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 465, in (1) and (2), substituted "youth care facility" for "foster home, child care agency, group home, or private treatment facility". Former 41-3-405 and 41-5-805 combined and renumbered.

Chapter 564 inserted (2)(a)(ii).

Cross-References

Remedy for parental abuse, 40-6-233.

Action on reporting, 41-3-202.

Interstate placement of children — financial responsibility, 41-4-102.

Investigation of ability to pay, 53-1-406.

Child rehabilitation — duties of Department, 53-4-113.

41-3-1124. Order for financial support. (1) Upon receipt of a financial status report pursuant to 41-3-1123, a court providing for disposition of a youth under 41-3-406, 41-5-523, or 41-5-524 shall hold a hearing to determine the ability of the youth's parents to contribute to the support of the youth or the adequacy of the guardianship assets to provide a contribution. If feasible, this hearing may be held in conjunction with a dispositional hearing under 41-3-406 or 41-5-522. In cases involving informal adjustment under 41-5-403, the department may petition the district court having jurisdiction for a hearing to determine the financial ability of the parents to contribute to the support of the youth or the adequacy of the guardianship assets to provide a contribution.

(2) In addition to the report prepared under 41-3-1123, any evidence concerning financial status may be introduced. In determining financial ability, the court shall consider the report and other evidence introduced at the hearing.

(3) If the court determines that the parents are able to contribute to the support of the youth or that the guardianship assets are adequate to provide a contribution, the court shall issue an order directing the parents or guardian to make specified payments to the department to the extent considered appropriate under the circumstances. Payments required of a guardian may not exceed the funds available from guardianship assets. Upon a showing of change in financial ability, the order may be modified.

History: 41-3-407 En. Sec. 8, Ch. 567, L. 1979; 41-3-407 amd. Sec. 14, Ch. 465, L. 1983, and Sec. 4, Ch. 564, L. 1983; 41-5-806 En. Sec. 12, Ch. 567, L. 1979; 41-3-407 and 41-5-806 combined by Sec. 31(3)(b), Ch. 465, L. 1983; redes. 41-3-1124 by Sec. 31(3)(c), Ch. 465, L. 1983.

Compiler's Comments

1983 Amendments — Composite: Chapter 465 combined and renumbered former 41-3-407 and 41-5-806. Amendment by sec. 14, Ch. 465, changing "foster home, child care agency, group home, or private treatment facility" to "youth care facility", does not appear because that language was not necessary in the combined section.

Chapter 564 inserted a reference to an order of limited emancipation in (1). Because this is done under 41-3-406, which is already referenced, the Code Commissioner has omitted the reference.

Cross-References

Obligations of parents for the support and education of their children, 40-6-211.

Remedy for parental abuse, 40-6-233.

Interstate placement of children — financial responsibility, 41-4-102.

Liability of resident or responsible person for assessed charges, 53-1-409.

41-3-1125. Recovery from parents or guardianship assets — division between state and county. (1) In the event any recovery is made from the parent or parents or guardianship assets of children for whom board, clothing, personal needs, and room have been paid by the state and county, any amount so recovered shall be divided equally between the department and the county of residence of such child or children.

(2) Any amount collected from the parents or guardianship assets when a child is placed in a youth care facility shall be transmitted to the department. The department shall then pay to the county one-half of the amount so collected.

History: (1)En. Sec. 2, Ch. 48, L. 1949; amd. Sec. 1, Ch. 264, L. 1971; Sec. 10-525, R.C.M. 1947; redes. 10-1321 by Sec. 14, Ch. 328, L. 1974; Sec. 10-1321, R.C.M. 1947; (2)En. 10-1313

by Sec. 9, Ch. 328, L. 1974; Sec. 10-1313, R.C.M. 1947; R.C.M. 1947, 10-1313(part), 10-1321; amd. Sec. 2, Ch. 567, L. 1979; amd. Sec. 15, Ch. 465, L. 1983; MCA 1981, 41-3-105; redes. 41-3-1125 by Sec. 31(4), Ch. 465, L. 1983.

Compiler's Comments

1983 Amendment: In (2), substituted "youth care facility" for "foster home, child care agency, group home, or private treatment facility".

Cross-References

Obligations of parents for the support and education of their children, 40-6-211.

Remedy for parental abuse, 40-6-233.

Interstate placement of children — financial responsibility, 41-4-102.

41-3-1126 through 41-3-1130 reserved.

41-3-1131. Power of nonprofit corporations to establish homes and to receive facilities and funds. Nonprofit corporations or associations may be formed or organized for the purpose of establishing youth care facilities or to provide community-based services and to receive from the department and other governmental units such services, facilities, training, and funds as the department or other governmental units may be authorized by law to provide.

History: En. Sec. 18, Ch. 465, L. 1983.

41-3-1132. Governmental contracts with nonprofit organizations. (1) The department may contract with nonprofit corporations or associations to provide facilities and services for youth in need of care, youth in need of supervision, and delinquent youth in youth care facilities and is authorized to expend such money as is appropriated or available therefor. Such contracts shall be based on the following considerations:

(a) budgets submitted by the nonprofit corporation or association identifying fixed and variable costs;

(b) reasonable costs of service;

(c) appropriation level; and

(d) availability of funds.

(2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning, are authorized, at their own expense, to provide funds, materials, facilities, and services for community-based services.

History: En. Sec. 19, Ch. 465, L. 1983.

Cross-References

Public contracts generally, Title 18, ch. 1.

41-3-1133 through 41-3-1140 reserved.

41-3-1141. License required. No person shall maintain or operate a youth care facility for any child or children within the meaning of this part without first securing a license in writing from the department. No fee shall be charged for such license.

History: En. Sec. 2, Ch. 178, L. 1947; amd. Sec. 47, Ch. 121, L. 1974; Sec. 10-521, R.C.M. 1947; redes. 10-1317 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1317; amd. Sec. 20, Ch. 465, L. 1983; MCA 1981, 41-3-502; redes. 41-3-1141 by Sec. 31(4), Ch. 465, L. 1983.

Compiler's Comments

1983 Amendment: Changed "foster or boarding home" to "youth care facility".

Cross-References

Requirements for visitation, inspection, and supervision, 41-4-106.

Administrative duties of Department, 53-4-111.

Child rehabilitation — duties of Department, 53-4-113.

Relationship of foster homes, youth group homes, and community residential facilities to zoning, 76-2-412.

41-3-1142. Issuance of license — authority of issuing agency. The department is hereby authorized to issue licenses to persons operating youth care facilities and to prescribe the conditions upon which such licenses shall be issued and to make such rules as it may deem advisable for the operation and regulation of such facilities for minor children consistent with the welfare of such children. Such licensing agency shall have the power and authority to inspect all such licensed facilities through its duly authorized representatives and to cancel licenses theretofore issued for the failure to observe such rules. The person operating such homes shall give to such representative such information as may be required and afford him every reasonable opportunity for observing the operation of such homes.

History: En. Sec. 2, Ch. 178, L. 1947; amd. Sec. 47, Ch. 121, L. 1974; Sec. 10-521, R.C.M. 1947; redes. 10-1317 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1317; amd. Sec. 21, Ch. 465, L. 1983; MCA 1981, 41-3-503; redes. 41-3-1142 by Sec. 31(4), Ch. 465, L. 1983.

Compiler's Comments

1983 Amendment: In first sentence, changed "persons conducting boarding or foster homes" to "persons operating youth care facilities" and changed "regulation of foster and boarding homes" to "regulation of such facilities"; in second sentence, changed "licensed foster and boarding homes" to "licensed facilities"; and in last sentence, substituted "opportunity" for "facility".

Cross-References

Requirements for visitation, inspection, and supervision, 41-4-106.

One-step licensing required, 50-8-102.

Administrative duties of Department, 53-4-111.

Duty to strengthen child welfare services, 53-4-112.

Child rehabilitation — duties of Department, 53-4-113.

Relationship of foster homes, youth group homes, and community residential facilities to zoning, 76-2-412.

41-3-1143. Penalty for failure to obtain license. Any person who maintains or operates a youth care facility or assists in operating or maintaining such facility without having first obtained a license in writing as hereto provided shall be guilty of a misdemeanor.

History: En. Sec. 4, Ch. 178, L. 1947; Sec, 10-523, R.C.M. 1947; redes. 10-1319 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1319; amd. Sec. 22, Ch. 465, L. 1983; MCA 1981, 41-3-504; redes. 41-3-1143 by Sec. 31(4), Ch. 465, L. 1983.

Compiler's Comments

1983 Amendment: Changed "conducts a foster or boarding home" to "operates a youth care facility"; changed "conducting . . . such home" to "operating . . . such facility"; and deleted final clause, which read: "and upon conviction be punished by a fine not to exceed $100".

Cross-References

Misdemeanor defined, 45-2-101.

Relationship of foster homes, youth group homes, and community residential facilities to zoning, 76-2-412.

CHAPTER 4

INTERSTATE PLACEMENT OF CHILDREN

Part 1 — Text of Compact

Section

41-4-101. Enactment — provisions.
41-4-102. Financial responsibility.

41-4-103. Appropriate public authorities defined.
41-4-104. Appropriate authority in the receiving state.
41-4-105. Agreements.
41-4-106. Requirements for visitation, inspection, and supervision.
41-4-107. Certain laws not applicable.
41-4-108. Court jurisdiction retained.
41-4-109. Executive head defined.

Chapter Cross-References

Adoption of children, Title 40, ch. 8, part 1.

Department to supervise importation and exportation of children, 53-4-114.

Subsidized adoption of hard-to-place children, Title 53, ch. 4, part 3.

Child adoption agencies, Title 53, ch. 4, part 4.

Part 1

Text of Compact

41-4-101. Enactment — provisions. The Interstate Compact on the Placement of Children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

Article I. Purpose and Policy

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(1) each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care;

(2) the appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child;

(3) the proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made;

(4) appropriate jurisdictional arrangements for the care of children will be promoted.

Article II. Definitions

As used in this compact:

(1) "child" means a person who, by reason of minority, is legally subject to parental, guardianship, or similar control;

(2) "sending agency" means a party state, officer or employee thereof; a subdivision of a party state or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency, or other entity which sends, brings, or causes to be sent or brought any child to another party state;

(3) "receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons

or agencies and whether for placement with state or local public authorities or for placement with private agencies or persons;

(4) "placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective, or epileptic or any institution primarily educational in character and any hospital or other medical facility.

Article III. Conditions for Placement

(1) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(2) Prior to sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(a) the name, date, and place of birth of the child;

(b) the identity and address or addresses of the parents or legal guardian;

(c) the name and address of the person, agency, or institution to or with which the sending agency proposes to send, bring, or place the child;

(d) a full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(3) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to (2) of this article may request of the sending agency or any other appropriate officer or agency of or in the sending agency's state and shall be entitled to receive therefrom such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(4) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

Article IV. Penalty for Illegal Placement

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place or care for children.

Article V. Retention of Jurisdiction

(1) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment,

and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting, or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or his transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by receiving state sufficient to deal with an act of delinquency or crime committed therein.

(2) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(3) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state, nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in (1) hereof.

Article VI. Institutional Care of Delinquent Children

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact, but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

(1) equivalent facilities for the child are not available in the sending agency's jurisdiction; and

(2) institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

Article VII. Compact Administrator

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules to carry out more effectively the terms and provisions of this compact.

Article VIII. Limitations

This compact shall not apply to:

(1) the sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state;

(2) any placement, sending, or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party or to any other agreement between said states which has the force of law.

Article IX. Enactment and Withdrawal

This compact shall be open to joinder by any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and with the consent of congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until 2 years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties, and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

Article X. Construction and Severability

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. 10-1401 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1401.

Cross-References

Effect of judicial record of another state, 26-3-203.

Interagency cooperation, 41-3-107.

Youth residential services, Title 41, ch. 3, part 11.

Disposition of delinquent youth and youth in need of supervision, 41-5-523.

Custodial care, Title 41, ch. 5, part 8.

Administrative duties of Department, 53-4-111.

Department to assist other agencies, 53-4-116.

Subsidized adoption, Title 53, ch. 4, part 3.

Child adoption agencies, Title 53, ch. 4, part 4.

41-4-102. Financial responsibility. Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of Article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of Title 40, chapter 5 (Revised Uniform Reciprocal Enforcement of Support Act) and 41-3-1122, 41-3-404, and 41-3-1123 also may be invoked.

History: En. 10-1402 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1402; amd. Sec. 18, Ch. 543, L. 1979; amd. Sec. 31, Ch. 465, L. 1983.

Compiler's Comments

1983 Amendment: Changed "41-3-104" to "41-3-1122" and "41-3-405" to "41-3-1123".

41-4-103. Appropriate public authorities defined. The "appropriate public authorities" as used in Article III of the Interstate Compact on the

Placement of Children shall, with reference to this state, mean the department of social and rehabilitation services, and said department shall receive and act with reference to notices required by said Article III.

History: En. 10-1403 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1403.

Cross-References

Administrative duties of Department, 53-4-111.

Child rehabilitation — duties of Department, 53-4-113.

Department to supervise importation and exportation of children, 53-4-114.

Department to assist other agencies, 53-4-116.

41-4-104. Appropriate authority in the receiving state. As used in Article V(1) of the Interstate Compact on the Placement of Children, the phrase "appropriate authority in the receiving state" with reference to this state shall mean the department of social and rehabilitation services.

History: En. 10-1404 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1404.

Cross-References

Administrative duties of Department, 53-4-111.

Child rehabilitation — duties of Department, 53-4-113.

Department to supervise importation and exportation of children, 53-4-114.

Department to assist other agencies, 53-4-116.

41-4-105. Agreements. The officers and agencies of this state and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to Article V(2) of the Interstate Compact on the Placement of Children. Any such agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision or agency thereof shall not be binding unless it has the approval in writing of the state treasurer in the case of the state and of the chief local fiscal officer in the case of a subdivision of the state.

History: En. 10-1405 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1405.

Cross-References

Payment for support of youth in need of care — reimbursement by county, 41-3-1122.

41-4-106. Requirements for visitation, inspection, and supervision. Any requirements for visitation, inspection, or supervision of children, homes, institutions, or other agencies in another party state which may apply under 41-3-1141, 41-3-1142, and 53-4-113 are considered to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by Article V(2) of the Interstate Compact on the Placement of Children.

History: En. 10-1406 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1406; amd. Sec. 31, Ch. 465, L. 1983.

Compiler's Comments

1983 Amendment: Changed 41-3-502 to 41-3-1141 and 41-3-503 to 41-3-1142.

Cross-References

Inspection by employees of other departments, 50-8-105.

41-4-107. Certain laws not applicable. The provisions of 53-4-114 shall not apply to placements made pursuant to the Interstate Compact on the Placement of Children.

History: En. 10-1407 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1407.

41-4-108. Court jurisdiction retained. Any court having jurisdiction to place delinquent children may place such a child in an institution of or in another state pursuant to Article VI of the Interstate Compact on the Placement of Children and shall retain jurisdiction as provided in Article V thereof.

History: En. 10-1408 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1408.

Cross-References

Jurisdiction and venue in abuse, neglect, and dependency cases, 41-3-103.

Youth Court — jurisdiction, Title 41, ch. 5, part 2.

41-4-109. Executive head defined. As used in Article VII of the Interstate Compact on the Placement of Children, the term "executive head" means the governor. The governor is hereby authorized to appoint a compact administrator in accordance with the terms of said Article VII.

History: En. 10-1409 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1409.

Cross-References

Policymaking authority and administrative powers of Governor, 2-15-103.

Powers and duties of Governor, 2-15-201.

CHAPTER 5

YOUTH COURT ACT

Part 1 — General

Section
41-5-101. Short title.
41-5-102. Declaration of purpose.
41-5-103. Definitions.
41-5-104. County commissioners authorized to provide funds.
41-5-105. Youth court committee.
41-5-106. Order of adjudication — noncriminal.
41-5-107. Administration.

Part 2 — Youth Court—Jurisdiction

41-5-201. Youth court judge.
41-5-202. Disqualification of judges.
41-5-203. Jurisdiction of the court.
41-5-204. Venue and transfer.
41-5-205. Retention of jurisdiction.
41-5-206. Transfer to criminal court.
41-5-207. Court costs and expenses.

Part 3 — Detention Procedure

41-5-301. Preliminary investigation and disposition.
41-5-302. Renumbered 41-3-1111.
41-5-303. Rights of youth upon apprehension.
41-5-304. Fingerprints and photographs.
41-5-305. Detention and shelter care of youth.
41-5-306. Place of shelter care or detention.
41-5-307. Release or delivery from custody.

Part 4 — Informal Proceeding

41-5-401. Consent adjustment without petition.
41-5-402. Communications privileged.

41-5-403. Disposition permitted under informal adjustment.

Part 5 — Proceeding on Petition

41-5-501. Petition — form and content.
41-5-502. Summons.
41-5-503. Service of summons.
41-5-504 through 41-5-510 reserved.
41-5-511. Right to counsel.
41-5-512. Appointment of guardian ad litem.
41-5-513. Right to confront witnesses.
41-5-514. Admissibility of confession or illegally seized evidence.
41-5-515. Persons to be advised of rights.
41-5-516. Time limitations on petition hearing — continuance.
41-5-517 through 41-5-520 reserved.
41-5-521. Adjudicatory hearing.
41-5-522. Dispositional hearing.
41-5-523. Disposition of delinquent youth and youth in need of supervision.
41-5-524. Consent decree with petition.
41-5-525 through 41-5-530 reserved.
41-5-531. Posttrial motions.
41-5-532. Appeals.
41-5-533. Probation revocation — disposition.

Part 6 — Confidentiality of Proceedings—Records

41-5-601. Publicity.
41-5-602. Law enforcement records.
41-5-603. Youth court records.
41-5-604. Disposition of records.

Part 7 — Probation Officers

41-5-701. Appointment of probation officers.
41-5-702. Qualifications of probation officers.
41-5-703. Powers and duties of probation officers.
41-5-704. Salary and expenses.
41-5-705. Deputy probation officers — salary.

Part 8 — Custodial Care

41-5-801. Renumbered 41-3-1121.
41-5-802. Shelter care and detention facilities.
41-5-803. Repealed.
41-5-804. Renumbered 41-3-1105.
41-5-805. Combined with 41-3-405, renumbered 41-3-1123.
41-5-806. Combined with 41-3-407, renumbered 41-3-1124.
41-5-807. Renumbered 41-3-1115.

Part 9 — District Youth Guidance Homes
(Repealed. Sec. 32, Ch. 465, L. 1983)

Chapter Cross-References

Crimes, Title 45.

Unlawful possession of an intoxicating substance by children, 45-5-624.

Use of firearms by children under fourteen prohibited, 45-8-344.

Department of Institutions — youthful offenders, Title 53, ch. 30, part 2.

Unlawful operation of a vehicle by a minor, 61-12-601.

Disposition of traffic fines collected from juveniles, 61-12-703.

Part 1

General

Part Cross-References
Destruction of property by minor — liability of parents, 40-6-237.
Youthful offenders, Title 53, ch. 30, part 2.

41-5-101. Short title. This chapter may be cited as the "Montana Youth Court Act".

History: En. 10-1201 by Sec. 1, Ch. 329, L. 1974; R.C.M. 1947, 10-1201.

41-5-102. Declaration of purpose. The Montana Youth Court Act shall be interpreted and construed to effectuate the following express legislative purposes:

(1) to preserve the unity and welfare of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of a youth coming within the provisions of the Montana Youth Court Act;

(2) to remove from youth committing violations of the law the element of retribution and to substitute therefor a program of supervision, care, rehabilitation, and, in appropriate cases, restitution as ordered by the youth court;

(3) to achieve the purposes of (1) and (2) of this section in a family environment whenever possible, separating the youth from his parents only when necessary for the welfare of the youth or for the safety and protection of the community;

(4) to provide judicial procedures in which the parties are assured a fair hearing and recognition and enforcement of their constitutional and statutory rights.

History: En. 10-1202 by Sec. 2, Ch. 329, L. 1974; R.C.M. 1947, 10-1202; amd. Sec. 1, Ch. 246, L. 1979.

Cross-References
Application of Montana Rules of Civil Procedure to this chapter, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).
Action on reporting, 41-3-202.
Abuse, neglect, or dependency proceedings, Title 41, ch. 3, part 4.
Recognition of parental control of children, 53-4-102.

41-5-103. Definitions. For the purposes of the Montana Youth Court Act, unless otherwise stated the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Commit" means to transfer to legal custody.

(4) "Court", when used without further qualification, means the youth court of the district court.

(5) "Foster home" means a private residence approved by the court for placement of a youth.

(6) "Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties, and responsibilities.

(7) "Judge", when used without further qualification, means the judge of the youth court.

(8) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise his rights and duties as guardian unless otherwise authorized by the court entering the order.

(9) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless his paternity is established by an adjudication or by other clear and convincing proof.

(10) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(11) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the youth court, the judge, and probation officers.

(12) "Delinquent youth" means a youth:

(a) who has committed an offense which, if committed by an adult, would constitute a criminal offense;

(b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of his probation.

(13) "Youth in need of supervision" means a youth who commits an offense prohibited by law which, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;

(b) habitually disobeys the reasonable and lawful demands of his parents or guardian or is ungovernable and beyond their control;

(c) being subject to compulsory school attendance, is habitually truant from school; or

(d) has committed any of the acts of a delinquent youth but whom the youth court in its discretion chooses to regard as a youth in need of supervision.

(14) "Youth in need of care" means a youth as defined in 41-3-102.

(15) "Custodian" means a person other than a parent or guardian to whom legal custody of the youth has been given but does not include a person who has only physical custody.

(16) "Necessary parties" include the youth, his parents, guardian, custodian, or spouse.

(17) "State youth correctional facility" means a residential facility for the rehabilitation of delinquent youth such as Pine Hills school in Miles City, and Mountain View school in Helena.

(18) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(19) "Detention" means the temporary substitute care of youth in physically restricting facilities.

(20) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made under the jurisdiction of a youth court proceeding.

(21) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who are removed from or without the care and supervision of their parents or guardian. Nothing in this definition is intended to include juvenile correctional facilities, evaluation facilities, mental health facilities and services, and aftercare programs operated by the department of institutions.

History: Ap. p. Sec. 3, Ch. 329, L. 1974; amd. Sec. 1, Ch. 571, L. 1977; Sec. 10-1203, R.C.M. 1947; Ap. p. Sec. 2, Ch. 427, L. 1971; Sec. 10-1102, R.C.M. 1947; amd. and redes. 10-1243 by Sec. 43, Ch. 329, L. 1974; amd. Sec. 15, Ch. 571, L. 1977; Sec. 10-1243, R.C.M. 1947; R.C.M. 1947, 10-1203, 10-1243; amd. Sec. 2, Ch. 246, L. 1979; amd. Sec. 1, Ch. 233, L. 1983; amd. Sec. 2, Ch. 465, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 233, at end of (17), deleted "and Swan River youth forest camp".

Chapter 465 made the following changes: in (2), substituted present definition for "the department of institutions, the department of social and rehabilitation services, and any division or department of either"; in (18) and (19) inserted "substitute" after "temporary"; deleted former (20), which read: "District youth guidance home means a family-oriented residence established in a judicial district of the state of Montana as an alternative to existing state youth correctional facilities, the function of which is to provide a home and guidance through adult supervision for delinquent youths and youths in need of supervision."; and inserted (21).

Cross-References

Minors and adults defined, 41-1-101.

Youth residential services, Title 41, ch. 3, part 11.

Guardians of minors, Title 72, ch. 5, part 2.

41-5-104. County commissioners authorized to provide funds. (1) The county commissioners of all counties are hereby authorized, empowered, and required to provide the necessary funds and to make all needful appropriations to carry out the provisions of this chapter.

(2) Each county shall pay its portion of the costs of the youth court based:

(a) on actual costs incurred in or on behalf of the county; or

(b) if actual costs cannot be identified, on each county's proportion of the total youth court workload in the judicial district during the calendar year preceding the setting of the budget.

(3) The youth court judge shall, in January of each year, establish the proportion of the workload of the court to be attributed to each county in the ensuing budget year for purposes of any necessary application of subsection (2)(b).

History: En. Sec. 30, Ch. 227, L. 1943; Sec. 10-631, R.C.M. 1947; redes. 10-1239 by Sec. 39, Ch. 329, L. 1974; R.C.M. 1947, 10-1239; amd. Sec. 1, Ch. 580, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (2) and (3).

Cross-References

District Court budget, 7-6-2351.

County levy for District Court expenses, 7-6-2511.

41-5-105. Youth court committee. In every county of the state the judge having jurisdiction may appoint a committee, willing to act without compensation, composed of not less than three or more than seven reputable citizens, including youth representatives, which committee shall be designated as a youth court committee. This committee shall be subject to the call of the judge to meet and confer with him on all matters pertaining to the youth department of the court, including the appointment of probation officers, and shall act as a supervisory committee of youth detention homes.

History: En. Sec. 27, Ch. 227, L. 1943; amd. Sec. 1, Ch. 128, L. 1957; amd. Sec. 13, Ch. 262, L. 1969; Sec. 10-628, R.C.M. 1947; amd. and redes. 10-1240 by Sec. 40, Ch. 329, L. 1974; R.C.M. 1947, 10-1240.

Cross-References

Allocation of money to judicial districts, 41-3-1106.

Place of shelter care or detention, 41-5-306.

Appointment of probation officers, 41-5-701.

41-5-106. Order of adjudication — noncriminal. No commitment of any youth to any state youth correctional facility under this chapter shall be deemed commitment to a penal institution. No adjudication upon the status of any youth in the jurisdiction of the court shall operate to impose any of the civil disability imposed on a person by reason of conviction of a criminal offense, nor shall such adjudication be deemed a criminal conviction, nor shall any youth be charged with or convicted of any crime in any court except as provided in this chapter. Neither the disposition of a youth under this chapter nor evidence given in youth court proceedings under this chapter shall be admissible in evidence except as otherwise provided in this chapter.

History: En. 10-1235 by Sec. 35, Ch. 329, L. 1974; amd. Sec. 11, Ch. 571, L. 1977; R.C.M. 1947, 10-1235.

Cross-References

Fingerprints and photographs, 41-5-304.

Communications privileged, 41-5-402.

Right to counsel, 41-5-511.

Admissibility of confession or illegally seized evidence, 41-5-514.

Disposition of delinquent youth and youth in need of supervision, 41-5-523.

Law enforcement records, 41-5-602.

Youth Court records, 41-5-603.

41-5-107. Administration. The provisions of Title 41, chapter 3, part 11, govern the administration of this chapter.

History: En. Sec. 30, Ch. 465, L. 1983.

Part 2

Youth Court — Jurisdiction

41-5-201. Youth court judge. (1) Each judicial district in the state shall have at least one judge of the youth court. His duties shall be to:

(a) appoint and supervise qualified personnel to staff the youth division probation departments within the judicial district;

(b) conduct hearings on youth court proceedings under this chapter;

(c) perform any other functions consistent with the legislative purpose of this chapter.

(2) In each multijudge judicial district the judges shall, by court rule, designate one or more of their number to act as youth court judge in each county in the judicial district for a fixed period of time. Service as youth court judge may be rotated among the different judges of the judicial district and among the individual counties within the judicial district for given periods of time. Continuity of service of a given judge as youth court judge and continuity in the operation and policies of the youth court in the county having the largest

population in the judicial district shall be the principal consideration of the rule.

History: En. 10-1233 by Sec. 33, Ch. 329, L. 1974; R.C.M. 1947, 10-1233(part); amd. Sec. 1, Ch. 60, L. 1985.

Compiler's Comments

1985 Amendment: Near beginning of (2) after "designate one", inserted "or more".

Cross-References

District Court judges, Title 3, ch. 5, part 2.

Proceeding on petition, Title 41, ch. 5, part 5.

Appointment of probation officers, 41-5-701.

41-5-202. Disqualification of judges. The statutes of the state of Montana relating to disqualification of judges in civil proceedings shall apply to all proceedings under this chapter.

History: En. 10-1223 by Sec. 23, Ch. 329, L. 1974; R.C.M. 1947, 10-1223.

Cross-References

Disqualification and substitution of judges — all courts, 3-1-802.

41-5-203. Jurisdiction of the court. (1) Except as provided in subsection (2), the court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care or concerning any person under 21 years of age charged with having violated any law of the state or ordinance of any city or town other than a traffic or fish and game law prior to having become 18 years of age.

(2) Justice, municipal, and city courts have concurrent jurisdiction with the youth court over all alcoholic beverage violations alleged to have been committed by a youth.

History: En. 10-1206 by Sec. 6, Ch. 329, L. 1974; amd. Sec. 3, Ch. 100, L. 1977; amd. Sec. 1, Ch. 446, L. 1977; R.C.M. 1947, 10-1206; amd. Sec. 1, Ch. 427, L. 1979.

Cross-References

Municipal Courts — jurisdiction, 3-6-103.

Justices' Courts — criminal jurisdiction, 3-10-303.

City Courts — concurrent jurisdiction, 3-11-102.

Jurisdiction of courts — alcohol violations, 16-6-201.

Jurisdiction and venue, 41-3-103.

Continuing jurisdiction of Youth Court, 41-3-1114.

Criminal possession of toxic substances, 45-9-121.

41-5-204. Venue and transfer. (1) The county where a youth is a resident or is alleged to have violated the law has initial jurisdiction over any youth alleged to be a delinquent youth. The youth court shall assume the initial handling of the case.

(2) The county where a youth is a resident has initial jurisdiction over any youth alleged to be a youth in need of supervision or a youth in need of care. The youth court of that county shall assume the initial handling of the case. Transfers of venue may be made to any of the following counties in the state:

(a) the county in which the youth is apprehended or found;

(b) the county in which the youth is alleged to have violated the law; or

(c) the county of residence of the youth's parents or guardian.

(3) In the case of a youth alleged to be a youth in need of supervision or a youth in need of care, a change of venue may be ordered at any time by the concurrence of the youth court judges of both counties in order to assure a fair, impartial, and speedy hearing and final disposition of the case.

(4) In the case of a youth 16 years of age or older who is accused of one of the serious offenses listed in 41-5-206, the court in the county where the offense occurred shall serve as a transfer hearing court, and if the youth is to be tried in district court, the charge shall be filed and trial held in the district court of the county where the offense occurred.

History: En. 10-1207 by Sec. 7, Ch. 329, L. 1974; R.C.M. 1947, 10-1207; amd. Sec. 2, Ch. 60, L. 1985.

Compiler's Comments

1985 Amendment: In first sentence of (1), after "resident", inserted "or is alleged to have violated the law" and after "jurisdiction over", substituted "any youth alleged to be a delinquent youth. The youth court shall assume the initial handling of the case.

(2) The county where a youth is a resident has initial jurisdiction over any youth alleged to be a youth in need of supervision or a youth in need of care." for "any youth alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care."; and at beginning of (3) inserted "In the case of a youth alleged to be a youth in need of supervision or a youth in need of care".

Cross-References

Residence — rules for determining, 1-1-215.

District Court original jurisdiction, 3-5-302.

Jurisdiction and venue, 41-3-103.

Place of trial — change of venue, 46-3-101.

Venue for certain specific crimes, Title 46, ch. 3, part 2.

41-5-205. Retention of jurisdiction. Once a court obtains jurisdiction over a youth, the court retains jurisdiction unless terminated by the court or by mandatory termination in the following cases:

(1) at the time the proceedings are transferred to adult criminal court;

(2) at the time of commitment of the youth to the custody of the department of institutions;

(3) in any event, at the time the youth reaches the age of 21 years.

History: En. 10-1208 by Sec. 8, Ch. 329, L. 1974; R.C.M. 1947, 10-1208.

Cross-References

Minors and adults defined, 41-1-101.

Jurisdiction and venue, 41-3-103.

Continuing jurisdiction of Youth Court, 41-3-1114.

Disposition permitted under informal adjustment, 41-5-403.

Disposition of delinquent youth and youth in need of supervision, 41-5-523.

41-5-206. Transfer to criminal court. (1) After a petition has been filed alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) (i) the youth charged was 12 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act would constitute sexual intercourse without consent as defined in 45-5-503, deliberate homicide as defined in 45-5-102, or mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult; or

(ii) the youth charged was 16 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(A) negligent homicide as defined in 45-5-104;

(B) arson as defined in 45-6-103;

(C) aggravated assault as defined in 45-5-202;

(D) robbery as defined in 45-5-401;

(E) burglary or aggravated burglary as defined in 45-6-204;

(F) sexual intercourse without consent as defined in 45-5-503;

(G) aggravated kidnapping as defined in 45-5-303;

(H) possession of explosives as defined in 45-8-335;

(I) criminal sale of dangerous drugs for profit as included in 45-9-101;

(J) attempt as defined in 45-4-103 of any of the acts enumerated in subsections (1)(a)(ii)(A) through (1)(a)(ii)(I);

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing will be to the youth court without a jury;

(c) notice in writing of the time, place, and purpose of the hearing is given to the youth, his counsel, and his parents, guardian, or custodian at least 10 days before the hearing; and

(d) the court finds upon the hearing of all relevant evidence that there are reasonable grounds to believe that:

(i) the youth committed the delinquent act alleged;

(ii) the seriousness of the offense and the protection of the community require treatment of the youth beyond that afforded by juvenile facilities; and

(iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

(2) In transferring the matter of prosecution to the district court, the court may also consider the following factors:

(a) the sophistication and maturity of the youth, determined by consideration of his home, environmental situation, and emotional attitude and pattern of living;

(b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts will not of itself be grounds for denying the transfer.

(c) the severity of the offense;

(d) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the youth by the use of procedures, services, and facilities currently available to the youth court.

(3) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the court was waived and the case transferred to district court.

(4) The transfer terminates the jurisdiction of the court over the youth with respect to the acts alleged in the petition. No youth may be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in this section.

(5) Upon order of the court transferring the case to the district court, the county attorney shall file the information against the youth without unreasonable delay.

(6) Any offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1), upon motion of the county attorney and acceptance by the district court judge.

(7) If a youth is found guilty in district court of any of the offenses enumerated in subsection (1) of this section and is sentenced to the state prison, his commitment shall be to the department of institutions which shall confine the youth in whatever institution it considers proper; however, no youth under 16 years of age may be confined in the state prison.

History: En. 10-1229 by Sec. 29, Ch. 329, L. 1974; amd. Sec. 9, Ch. 100, L. 1977; R.C.M. 1947, 10-1229; amd. Sec. 1, Ch. 484, L. 1981; amd. Sec. 3, Ch. 60, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (1)(a)(i), in (1)(a)(ii)(A) substituted "negligent homicide as defined in 45-5-104" for "criminal homicide as defined in 45-5-101"; and at end of (7) inserted "however, no youth under 16 years of age may be confined in the state prison".

1981 Amendment: Inserted subsections (1)(a)(x) (now (1)(a)(ii)(J)), (2)(c), and (6); substituted "may" for "shall" after "court" in the introductory clause of (2); added the provision relating to prior juvenile history with youth courts to the end of (2)(b).

Cross-References

Petition — form and content, 41-5-501.
Right to counsel, 41-5-511.
Law enforcement records, 41-5-602.
Youth Court records, 41-5-603.
Commutation of sentence to state prison and transfer to juvenile correctional facility, 53-30-212.

41-5-207. Court costs and expenses. (1) The following expenses shall be a charge upon the funds of the court or other appropriate agency when applicable, upon their certification by the court:

(a) the costs of medical and other examinations and treatment of a youth ordered by the court;

(b) reasonable compensation for services and related expenses for counsel appointed by the court for a party;

(c) the expenses of service of summons, notices, subpoenas, traveling expenses of witnesses, and other like expenses incurred in any proceeding under the Montana Youth Court Act as provided for by law;

(d) reasonable compensation of a guardian ad litem appointed by the court;

(e) cost of transcripts and printing briefs on appeal; and

(f) cost of detention as provided for in 41-5-306(4).

(2) If treatment pursuant to subsection (1)(a) is ordered to be given at the Montana youth treatment center, costs shall be subject to reimbursement pursuant to Title 53, chapter 1, part 4. *(Subsection (1)(f) terminates July 1, 1987—sec. 5, Ch. 737, L. 1985.)*

History: En. 10-1226 by Sec. 26, Ch. 329, L. 1974; R.C.M. 1947, 10-1226; amd. Sec. 6, Ch. 363, L. 1983; amd. Sec. 1, Ch. 737, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (1)(f). Amendment terminates July 1, 1987 (sec. 5, Ch. 737, L. 1985).

1983 Amendment: Inserted (2).

Cross-References

Rights of persons not adults, Art. II, sec. 15, Mont. Const.
Mileage — allowance, 2-18-503.
Mileage computed by shortest traveled route, 2-18-504.
Clerk of District Court — duties relating to jurors and witnesses, 3-5-510.
Procedure in reference to witnesses' certificates, 3-5-511.
Copies of proceedings, 3-5-604.
Guardian ad litem, 25-5-301, 41-3-303.
Allowable costs, Title 25, ch. 10, part 2.
Attorneys' fees, Title 25, ch. 10, part 3.
Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).
Right to counsel, 41-5-511.
Appointment of guardian ad litem, 41-5-512.
Remuneration of appointed counsel, 46-8-201.

Part 3

Detention Procedure

41-5-301. Preliminary investigation and disposition. (1) Whenever the court receives information from any agency or person, based upon reasonable grounds, that a youth is or appears to be a delinquent youth or a youth in need of supervision or, being subject to a court order or consent order, has violated the terms thereof, the probation officer shall make a preliminary inquiry into the matter.

(2) The probation officer may:

(a) require the presence of any person relevant to the inquiry;

(b) request subpoenas from the judge to accomplish this purpose;

(c) require investigation of the matter by any law enforcement agency or any other appropriate state or local agency.

(3) If the probation officer determines that the facts indicate a youth in need of care, the matter shall be immediately referred to the department of social and rehabilitation services.

(4) (a) The probation officer in the conduct of the preliminary inquiry shall:

(i) advise the youth of the youth's rights under this chapter and the constitutions of the state of Montana and the United States;

(ii) determine whether the matter is within the jurisdiction of the court;

(iii) determine, if the youth is in detention or shelter care, whether such detention or shelter care should be continued based upon criteria set forth in 41-5-305.

(b) Once relevant information is secured, the probation officer shall:

(i) determine whether the interest of the public or the youth requires that further action be taken;

(ii) terminate the inquiry upon the determination that no further action be taken;

(iii) release the youth immediately upon the determination that the filing of a petition is not authorized.

(5) The probation officer upon determining that further action is required may:

(a) provide counseling, refer the youth and his parents to another agency providing appropriate services, or take any other action or make any informal adjustment that does not involve probation or detention;

(b) provide for treatment or adjustment involving probation or other disposition authorized under 41-5-401 through 41-5-403, provided such treatment or adjustment is voluntarily accepted by the youth's parents or guardian and the youth, and provided further that said matter is referred immediately to the county attorney for review and that the probation officer proceed no further unless authorized by the county attorney;

(c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent youth or a youth in need of supervision.

(6) A petition charging a youth held in detention must be filed within 5 working days from the date the youth was first detained or the petition shall be dismissed and the youth released unless good cause is shown to further detain such youth.

(7) If no petition is filed under this section, the complainant and victim, if any, shall be informed by the probation officer of the action and the reasons therefor and shall be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the probation officer, and make the final decision as to whether a petition shall or shall not be filed.

History: En. 10-1209 by Sec. 9, Ch. 329, L. 1974; amd. Sec. 2, Ch. 571, L. 1977; R.C.M. 1947, 10-1209.

Cross-References

Subpoena for attendance of witnesses, Rule 45(a), M.R.Civ.P. (see Title 25, ch. 20).

Proceeding on petition, Title 41, ch. 5, part 5.

Powers and duties of probation officers, 41-5-703.

41-5-302. Renumbered 41-3-1111. Sec. 31, Ch. 465, L. 1983.

41-5-303. Rights of youth upon apprehension. When a youth is detained for investigation or questioning upon a matter which could result in a petition alleging that the youth being detained is either delinquent or in need of supervision, the following requirements must be met:

(1) The youth shall be immediately and effectively advised of his constitutional rights and his rights under this chapter.

(2) The youth may waive such rights under the following situations:

(a) when the youth is under the age of 12 years, the parents of the youth may make an effective waiver;

(b) when the youth is over the age of 12 years and the youth and his parents agree, they may make an effective waiver; and

(c) when the youth is over the age of 12 years and the youth and his parents do not agree, the youth may make an effective waiver only with advice of counsel.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(1)(a), (1)(b); amd. Sec. 1, Ch. 385, L. 1979.

Cross-References

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

Rights of the accused, Art. II, sec. 24, Mont. Const.

Taking into custody, 41-3-1111.

Right to counsel, 41-5-511.

Persons to be advised of rights, 41-5-515.

Waiver of counsel, 46-8-102.

41-5-304. Fingerprints and photographs. (1) Title 46 shall apply to all law enforcement investigations relating to a complaint alleging a delinquent youth or youth in need of supervision, except that:

(a) no youth may be fingerprinted or photographed for criminal identification purposes except by order of the youth court judge;

(b) no fingerprint records or photographs may be filed with the federal bureau of investigation, the Montana department of justice, or any other than the originating agency, except for sending the fingerprints or photographs to any law enforcement agency for comparison purposes in the original investigation.

(2) Fingerprint records and photographs shall be retained by the originating agency only until the youth reaches the age of majority unless the judge orders the records destroyed at an earlier date. Any such record may be used by the originating agency for comparison and identification purposes in any

other investigation only when probable cause is established before the youth court judge that the youth is a principal suspect.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(2); amd. Sec. 2, Ch. 484, L. 1981.

Compiler's Comments

1981 Amendment: Deleted the first sentence of (2) which provided for destruction of fingerprint and photograph records at completion of proceedings; substituted "shall" for "may" before "be retained" in the first sentence of (2); deleted "for a specific period when ordered by the court for good cause shown" after "originating agency" near the middle of (2); added the language concerning retaining records until the youth's majority and use of such records to the end of (2).

Cross-References

Law enforcement records, 41-5-602.
Disposition of records, 41-5-604.

41-5-305. Detention and shelter care of youth. (1) A youth taken into custody may not be detained in a jail or other facility for detention purposes unless he has allegedly committed an act which if committed by an adult would constitute a criminal offense, and:

(a) the alleged act is one of the following:

(i) criminal homicide as defined in 45-5-101;

(ii) arson as defined in 45-6-103;

(iii) aggravated or felony assault as defined in 45-5-202;

(iv) robbery as defined in 45-5-401;

(v) burglary or aggravated burglary as defined in 45-6-204;

(vi) sexual intercourse without consent as defined in 45-5-503;

(vii) aggravated kidnapping as defined in 45-5-303;

(viii) possession of explosives as defined in 45-8-335;

(ix) criminal sale of dangerous drugs for profit as included in 45-9-101; or

(x) attempt as defined in 45-4-103 of any of the acts enumerated in subsections (1)(a)(i) through (1)(a)(ix);

(b) he has escaped from a correctional facility;

(c) he has violated a valid court order or an aftercare agreement; or

(d) he meets the criteria for detention established by the youth court.

(2) A youth taken into custody may not be sheltered prior to the hearing on the petition except when:

(a) the youth and his family need shelter care to address their problematic situation when it is not possible for the youth to remain at home;

(b) the youth needs to be protected from physical or emotional harm;

(c) the youth needs to be deterred or prevented from immediate repetition of his troubling behavior;

(d) shelter care is necessary to assess the youth and his environment;

(e) shelter care is necessary to provide adequate time for case planning and disposition; or

(f) shelter care is necessary to intervene in a crisis situation and provide intensive services or attention that might alleviate the problem and reunite the family.

History: En. 10-1212 by Sec. 12, Ch. 329, L. 1974; amd. Sec. 4, Ch. 571, L. 1977; R.C.M. 1947, 10-1212; amd. Sec. 1, Ch. 689, L. 1985.

Compiler's Comments

1985 Amendment: In (1) substituted present language for former (1) that read: "A youth taken into custody may not be detained prior to the hearing on the petition except when:

(a) his detention is required to protect the person or the property of others or of the youth;

(b) he has pending court or administrative action or is awaiting a transfer to another jurisdiction and may abscond or be removed from the jurisdiction of the court;

(c) there are not adequate assurances that the youth will appear for court when required; or

(d) an order for his detention has been made by the court".

Cross-References

Detention, Art. II, sec. 23, Mont. Const.

Protective care, Title 41, ch. 3, part 3.

Montana Youth Court Act — declaration of purpose, 41-5-102.

Shelter care and detention facilities, 41-5-802.

Interstate Compact on Juveniles, Title 41, ch. 6, part 1.

41-5-306. *(Temporary)* **Place of shelter care or detention.** (1) A youth alleged to be a delinquent youth or youth in need of supervision may be sheltered only in:

(a) a licensed youth foster home as defined in 41-3-1102;

(b) a facility operated by a licensed child welfare agency; or

(c) a licensed youth group home as defined in 41-3-1102.

(2) A youth alleged to be a delinquent youth may be detained in a jail or other facility for the detention of adults only if:

(a) the facilities in subsection (1) are not available or do not provide adequate security;

(b) the detention is in an area physically and visually separate and removed from those of adults;

(c) it appears to the satisfaction of the court that public safety and protection reasonably require detention; and

(d) the court so orders.

(3) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately if a person who is or appears to be under the age of 18 years is received at the facility. Such official shall bring the person before the court upon request or deliver him to a detention facility designated by the court.

(4) (a) A youth alleged to be a delinquent youth may be detained at Mountain View school as provided in 53-30-202. The superintendent of the school must be notified before a youth is transported to the school for detention. The county of the youth's residence shall:

(i) pay the cost of transporting the youth to and from the school;

(ii) pay medical costs incurred by the youth during detention; and

(iii) reimburse the state general fund for the per diem cost of detention. The department of institutions, at the beginning of each fiscal year, shall determine the per diem rate by dividing the additional budgeted daily cost of providing detention services by the anticipated average daily detention population.

(b) Counties receiving detention services will be billed monthly for services provided the preceding month, and may be refused further services if bills are not paid within 60 days of receipt of statement.

(c) The county shall pay the costs provided for in subsection (4)(a) from the county's district court fund.

(5) A youth alleged to be in need of care shall be placed only in the facilities stated in subsection (1) of this section and shall not be detained in a jail or other facility intended or used for the detention of adults charged with criminal offenses.

41-5-306. *(Effective July 1, 1987)* **Place of shelter care or detention.** (1) A youth alleged to be a delinquent youth or youth in need of supervision may be sheltered only in:

(a) a licensed youth foster home as defined in 41-3-1102;
(b) a facility operated by a licensed child welfare agency; or
(c) a licensed youth group home as defined in 41-3-1102.

(2) The youth may be detained in a jail or other facility for the detention of adults only if:

(a) the facilities in subsection (1) are not available or do not provide adequate security;

(b) the detention is in an area physically and visually separate and removed from those of adults;

(c) it appears to the satisfaction of the court that public safety and protection reasonably require detention; and

(d) the court so orders.

(3) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately if a person who is or appears to be under the age of 18 years is received at the facility. Such official shall bring the person before the court upon request or deliver him to a detention facility designated by the court.

(4) A youth alleged to be in need of care shall be placed only in the facilities stated in subsection (1) of this section and shall not be detained in a jail or other facility intended or used for the detention of adults charged with criminal offenses.

History: En. 10-1214 by Sec. 14, Ch. 329, L. 1974; amd. Sec. 6, Ch. 571, L. 1977; R.C.M. 1947, 10-1214; amd. Sec. 3, Ch. 465, L. 1983; amd. Sec. 2, Ch. 737, L. 1985.

Compiler's Comments

1985 Amendment: In (2) substituted "A youth alleged to be a delinquent youth" for "The youth"; and inserted (4). Amendment terminates July 1, 1987 (Sec. 5, Ch. 737, L. 1985).

1983 Amendment: In (1)(a), substituted present language for "a licensed foster home or a home approved by the court for the provision of shelter care of youth"; in (1)(c), substituted present language for "a licensed attention home or shelter facility which is operated by a nonprofit corporation or the youth court for the provision of shelter care of youth"; and deleted former (1)(d), which read: "any other suitable place or facility designated or operated by the court for the supervision of youth in shelter care".

Cross-References

Segregation of prisoners — confinement of juveniles, 7-32-2221.

Shelter care and detention facilities, 41-5-802.

Corrections — youthful offenders, Title 53, ch. 30, part 2.

Hearing on alleged violation of aftercare agreement — right to appeal outcome, 53-30-229.

41-5-307. Release or delivery from custody. (1) Whenever a peace officer believes, on reasonable grounds, that a youth can be released to a person who has custody of the youth, then the peace officer may release the youth to that person upon receiving a written promise from the person to bring the youth before the probation officer at a time and place specified in the written promise, or a peace officer may release the youth under any other reasonable circumstances.

(2) Whenever the peace officer believes, on reasonable grounds, that the youth must be detained, the peace officer must notify the probation officer immediately and shall, as soon as practicable, provide the probation officer with a written report of his reasons for holding that youth in custody. If it is necessary to hold the youth pending appearance before the youth court, then the youth must be held in some place that has been approved by the youth court and is completely separated from adult offenders. If the peace officer believes that the youth must be sheltered, the peace officer shall notify

the probation officer immediately and shall provide a written report of his reasons for placing the youth in shelter care. If the youth is then held, the youth must be sheltered in a place approved by the youth court.

History: En. 10-1213 by Sec. 13, Ch. 329, L. 1974; amd. Sec. 1, Ch. 348, L. 1975; amd. Sec. 5, Ch. 571, L. 1977; R.C.M. 1947, 10-1213.

Cross-References

Powers and duties of probation officers, 41-5-703.

Shelter care and detention facilities, 41-5-802.

Release by officer of person arrested, 46-6-403.

Notice to appear, 46-6-404.

Release on own recognizance, 46-9-111.

Part 4

Informal Proceeding

41-5-401. Consent adjustment without petition. (1) Before a petition is filed, the probation officer may enter into an informal adjustment and give counsel and advice to the youth and other interested parties if it appears:

(a) the admitted facts bring the case within the jurisdiction of the court;

(b) counsel and advice without filing a petition would be in the best interests of the child and the public.

(2) Any probation or other disposition imposed under this section against any youth must conform to the following procedures:

(a) Every consent adjustment shall be reduced to writing and signed by the youth and his parents or the person having legal custody of the youth.

(b) Approval by the youth court judge is required if the complaint alleges commission of a felony or if the youth has been or will be in any way detained.

History: En. 10-1210 by Sec. 10, Ch. 329, L. 1974; amd. Sec. 4, Ch. 100, L. 1977; amd. Sec. 3, Ch. 571, L. 1977; R.C.M. 1947, 10-1210(1), (2).

Cross-References

Youth Court Judge, 41-5-201.

Jurisdiction of the court, 41-5-203.

Preliminary investigation and disposition, 41-5-301.

Powers and duties of probation officers, 41-5-703.

41-5-402. Communications privileged. An incriminating statement relating to any act or omission constituting delinquency or need of supervision made by the participant to the person giving counsel or advice in the discussions or conferences incident thereto may not be used against the declarant in any proceeding under this chapter, nor may the incriminating statement be admissible in any criminal proceeding against the declarant.

History: En. 10-1210 by Sec. 10, Ch. 329, L. 1974; amd. Sec. 4, Ch. 100, L. 1977; amd. Sec. 3, Ch. 571, L. 1977; R.C.M. 1947, 10-1210(3).

Cross-References

Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

Policy to protect confidentiality in certain relations, 26-1-801.

Confidential communications made to public officer, 26-1-810.

41-5-403. Disposition permitted under informal adjustment. (1) The following dispositions may be imposed by informal adjustment:

(a) probation;

(b) placement of the youth for substitute care into a youth care facility as defined in 41-3-1102 or into a home approved by the court;

(c) placement of the youth in a private agency responsible for the care and rehabilitation of such a youth;

(d) transfer of legal custody to the department of institutions for a period of 6 months, which period may be extended for 6 months upon further order of the court after notice and hearing;

(e) restitution upon approval of the youth court judge.

(2) In determining whether restitution is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;

(b) ability of the youth to pay;

(c) ability of the parents or legal guardian to pay;

(d) amount of damage to the victim; and

(e) legal remedies of the victim; however, the ability of the victim or his insurer to stand any loss may not be considered in any case.

(3) If the court finds that placement in a youth care facility other than a youth group home or youth foster home is necessary and in the best interests of the youth and the community, the court shall determine if the youth can receive appropriate treatment in a youth care facility located in Montana as follows:

(a) If the court finds the youth can receive appropriate treatment in a youth care facility located in Montana that will accept the youth, the court may not place the youth in a youth care facility located outside this state unless an out-of-state facility can provide appropriate treatment that:

(i) can be obtained at a cost less than that offered by any available facility in this state; and

(ii) is available in closer proximity to the youth's place of residence than any facility located in this state.

(b) When the department of social and rehabilitation services is ordered to pay the costs of caring for the child in a youth care facility other than a youth foster home or youth group home, the court shall provide the department with at least 5 days' written notice and opportunity to be heard before ordering the placement of the youth.

(4) If the youth violates his aftercare agreement as provided for in 53-30-226, he must be returned to the court for further disposition. No youth may be placed in a state youth correctional facility under informal adjustment.

(5) If custody is given to the department of institutions under subsection (1)(d), the youth may not be committed to the Montana youth treatment center unless the commitment provisions of 53-21-505 are followed.

History: En. 10-1210 by Sec. 10, Ch. 329, L. 1974; amd. Sec. 4, Ch. 100, L. 1977; amd. Sec. 3, Ch. 571, L. 1977; R.C.M. 1947, 10-1210(4); amd. Sec. 3, Ch. 246, L. 1979; amd. Sec. 3, Ch. 484, L. 1981; amd. Sec. 1, Ch. 129, L. 1983; amd. Sec. 7, Ch. 363, L. 1983; amd. Sec. 4, Ch. 465, L. 1983; amd. Sec. 5, Ch. 531, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (3).

1983 Amendments: Chapter 129 made the following changes: in (1)(d), substituted present language for "transfer of legal custody of the youth to the department of institutions, provided that such commitment does not authorize the department of institutions to place the youth in a state youth correctional facility, and such commitment may not exceed a period of 6 months without a subsequent order of the court, after notice and hearing;" and inserted (3) (now (4)).

Chapter 363 inserted (4) (now (5)).

Chapter 465 made the following changes: in (1)(b), substituted language after "placement of the youth" for "in a licensed foster home or other home approved by the court"; at end of

(1)(c), deleted "including but not limited to a district youth guidance home".

1981 Amendment: Added the provision concerning ability to pay to (2)(e).

Cross-References

Destruction of property by minor — liability of parents, 40-6-237.

Foster care payments for Youth Court placements, 41-3-1121.

Montana Youth Court Act — declaration of purpose, 41-5-102.

Retention of jurisdiction, 41-5-205.

Youthful offenders — Department of Institutions, Title 53, ch. 30, part 2.

Part 5

Proceeding on Petition

41-5-501. Petition — form and content. A petition initiating proceedings under this chapter shall be signed by the county attorney and shall be entitled "In the Matter of ...., a youth" and shall set forth with specificity:

(1) the facts necessary to invoke the jurisdiction of the court, together with a statement alleging the youth to be a delinquent or in need of supervision;

(2) the charge of an offense, which shall:

(a) state the name of the offense;

(b) cite in customary form the statute, rule, or other provisions of law which the youth is alleged to have violated;

(c) state the facts constituting the offense in ordinary and concise language and in such manner as to enable a person of common understanding to know what is intended; and

(d) state the time and place of the offense as definitely as can be done;

(3) the name, birth date, and residence address of the youth;

(4) the names and residence addresses of parents, guardian, and spouse of the youth and, if none of the parents, guardian, or spouse resides or can be found within the state or if there is none, the adult relative residing nearest to the court;

(5) whether the youth is in detention or shelter care and, if so, the place of detention or shelter care and the time he was detained or sheltered;

(6) if any of the matters required to be set forth by this section are not known, a statement of those matters and the fact that they are not known; and

(7) a list of witnesses to be used in proving the commission of the offense or offenses charged in the petition, together with their residence addresses. The names and addresses of any witnesses discovered after the filing of the petition shall be furnished to the youth upon request.

History: En. 10-1215 by Sec. 15, Ch. 329, L. 1974; amd. Sec. 7, Ch. 571, L. 1977; R.C.M. 1947, 10-1215.

Cross-References

Rights of the accused, Art. II, sec. 24, Mont. Const.

Jurisdiction of the court, 41-5-203.

Duty of court at initial appearance, 46-7-102.

Form of charge, 46-11-401.

41-5-502. Summons. (1) After a petition has been filed, summons shall be served directly to:

(a) the youth;

(b) his parent or parents having actual custody of the youth or his guardian or custodian, as the case may be; and

(c) such other persons as the court may direct.

(2) The summons shall:

(a) require the parties to whom directed to appear personally before the court at the time fixed by the summons to answer the allegations of the petition;

(b) advise the parties of their right to counsel under the Montana Youth Court Act; and

(c) have attached to it a copy of the petition.

(3) The court may endorse upon the summons an order directing the person or persons having the physical custody or control of the youth to bring the youth to the hearing.

(4) If it appears from any sworn statement presented to the court that the youth needs to be placed in detention or shelter care, the judge may endorse on the summons an order directing the officer serving the summons to at once take the youth into custody and to take him to the place of detention or shelter care designated by the court, subject to the rights of the youth and parent or person having custody of the youth as set forth in the provisions of the Montana Youth Court Act relating to detention and shelter care criteria and postdetention proceedings.

(5) If any youth is in shelter care or detained under any provision of this chapter pending an adjudication, the court, upon petition of the youth, his parents or guardian, or his counsel, shall, as soon as practicable, conduct a hearing in order to determine whether the circumstances of the case require such detention or shelter care and the form the detention or shelter care should take. All mentioned parties shall be notified of such petition process at the time of initial detention or shelter care.

History: En. 10-1216 by Sec. 16, Ch. 329, L. 1974; amd. Sec. 8, Ch. 571, L. 1977; R.C.M. 1947, 10-1216.

Cross-References

Habeas corpus, Art. II, sec. 19, Mont. Const.; Title 46, ch. 22.

Rights of the accused, Art. II, sec. 24, Mont. Const.

Shelter care and detention facilities, 41-5-802.

Summons, Title 46, ch. 6, part 3.

41-5-503. Service of summons. (1) Any youth who is the subject of a proceeding under this chapter must be personally served with summons at least 5 days before the time stated for appearance.

(2) Service of summons on all other persons designated in 41-5-502(1) shall be made in accordance with Rule 4D of the Montana Rules of Civil Procedure, except that in all cases service shall be completed at least 5 days before the time stated for appearance.

(3) If a party referred to in subsection (2) herein is not personally served before a hearing and has not secluded himself with an attempt to delay or disrupt any proceeding, such party may appear within a reasonable time subsequent to the hearing and, on motion to the court, request a rehearing. The motion may be granted at the discretion of the judge if a rehearing would be in the best interest of the youth.

(4) The court may authorize payment from county funds of costs of service and necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

(5) An actual abandonment of a youth by his parent or parents shall constitute a waiver of summons and notice requirements by the parent or parents. A return endorsed upon the summons showing inability to serve summons constitutes prima facie evidence of actual abandonment.

(6) The youth court may, in the interests of justice, shorten the notice requirements contained herein, and such notice of shortened time shall be endorsed on the summons.

(7) A party, other than the youth, may waive service of summons on himself by written stipulation or by voluntary appearance at the hearing. If the youth is present at the hearing, his counsel may waive service of summons in his behalf.

History: En. 10-1217 by Sec. 17, Ch. 329, L. 1974; amd. Sec. 5, Ch. 100, L. 1977; R.C.M. 1947, 10-1217.

Cross-References

Motions and other papers, Rule 7(b), M.R.Civ.P. (see Title 25, ch. 20).

Parent may relinquish services and custody of child, 40-6-235.

Court costs and expenses, 41-5-207.

When summons may be issued — service, 46-6-301.

41-5-504 through 41-5-510 reserved.

41-5-511. Right to counsel. In all proceedings following the filing of a petition alleging a delinquent youth or youth in need of supervision, the youth and the parents or guardian of the youth shall be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained, counsel shall be appointed for the youth if the parents and the youth are unable to provide counsel unless the right to appointed counsel is waived by the youth and the parents or guardian. Neither the youth nor his parent or guardian may waive counsel after a petition has been filed if commitment to a state correctional facility or to the department of institutions for a period of more than 6 months may result from adjudication.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(3); amd. Sec. 1, Ch. 386, L. 1979; amd. Sec. 4, Ch. 484, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "if the parents and the youth are unable to provide counsel" near the middle of the section.

Cross-References

Rights of the accused, Art. II, sec. 24, Mont. Const.

Representation of child, 40-4-205.

Right to counsel, 46-8-101.

Waiver of counsel, 46-8-102.

41-5-512. Appointment of guardian ad litem. The court at any stage of a proceeding on a petition under this chapter may appoint a guardian ad litem for a youth if the youth has no parent or guardian appearing in his behalf or if their interests conflict with those of the youth. A party to the proceeding or an employee or representative of a party may not be appointed as guardian ad litem.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(4).

Cross-References

Appointment of guardian ad litem, 25-5-301.

Parties to paternity proceedings, 40-6-110.

Guardian ad litem, 41-3-303.

41-5-513. Right to confront witnesses. In a proceeding on a petition, a party is entitled to:

(1) the opportunity to introduce evidence and otherwise be heard on the party's own behalf;

(2) confront and cross-examine witnesses testifying against the party; and

(3) admit or deny the allegations against the party in the petition.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(5).

Cross-References

Rights of the accused, Art. II, sec. 24, Mont. Const.

41-5-514. Admissibility of confession or illegally seized evidence. In a proceeding alleging a youth to be a delinquent youth:

(1) an extrajudicial statement that would be constitutionally inadmissible in a criminal matter may not be received in evidence;

(2) evidence illegally seized or obtained may not be received in evidence to establish the allegations of a petition against a youth; and

(3) an extrajudicial admission or confession made by the youth out of court is insufficient to support a finding that the youth committed the acts alleged in the petition unless it is corroborated by other evidence.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(1)(c).

Cross-References

Rights of the accused, Art. II, sec. 24, Mont. Const.

Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time, Rule 403, Montana Rules of Evidence (see Title 26, ch. 10).

Waiver of privilege by voluntary disclosure, Rule 503, Montana Rules of Evidence (see Title 26, ch. 10).

Fingerprints and photographs, 41-5-304.

Communications privileged, 41-5-402.

Search and seizure — legality and admissibility, Title 46, ch. 5, part 1.

Testimony of person legally accountable, 46-16-213.

41-5-515. Persons to be advised of rights. Persons afforded rights under this chapter shall be advised of those rights and any other rights existing under law at the time of their first appearance in a proceeding on a petition under the Montana Youth Court Act and at any other time specified in that act or other law.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(6).

Cross-References

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

Rights of the accused, Art. II, sec. 24, Mont. Const.

Rights of youth upon apprehension, 41-5-303.

Duty of court at initial appearance, 46-7-102.

41-5-516. Time limitations on petition hearing — continuance. (1) Unless the allegations of a petition alleging that a youth is a delinquent youth or a youth in need of supervision are determined by a written admission of the allegations by the youth, the petition shall be dismissed with prejudice if a hearing on the petition is not begun within 15 days after all service is completed. However, either party may move for a continuance under subsection (2) of this section.

(2) The youth court may, upon motion of either party or upon the court's own motion, order a continuance if the interests of justice so require. All motions for a continuance are addressed to the discretion of the youth court judge and must be considered in the light of the diligence shown on the part of the movant.

(3) Delays resulting from service of process or delays resulting from legal actions taken in behalf of the youth shall not be included in the 15-day time limitation.

History: En. 10-1219 by Sec. 19, Ch. 329, L. 1974; R.C.M. 1947, 10-1219; amd. Sec. 1, Ch. 215, L. 1979; amd. Sec. 1, Ch. 158, L. 1983.

Compiler's Comments

1983 Amendment: At end of (1), deleted "if the youth is not in custody"; and in (2), before "interests of justice" deleted "youth is not in custody and".

Cross-References

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

Rights of the accused, Art. II, sec. 24, Mont. Const.

Motion to postpone trial, Title 25, ch. 4, part 5.

41-5-517 through 41-5-520 reserved.

41-5-521. Adjudicatory hearing. (1) Prior to any adjudicatory hearing, the court shall determine whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses alleged in the petition, the youth, his parent, guardian, or attorney may demand a jury trial on such contested offenses. In the absence of such demand, a jury trial is waived. If the youth denies some offenses and admits others, the contested offenses may be dismissed in the discretion of the youth court judge. The adjudicatory hearing shall be set immediately and accorded a preferential priority.

(2) An adjudicatory hearing shall be held to determine whether the contested offenses are supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in need of supervision. If the hearing is before a jury, the jury's function shall be to determine whether the youth committed the contested offenses. If the hearing is before the youth court judge without a jury, the judge shall make and record his findings on all issues. If the allegations of the petitions are not established at the hearing, the youth court shall dismiss the petition and discharge the youth from custody.

(3) An adjudicatory hearing shall be recorded verbatim by whatever means the court considers appropriate.

(4) The youth charged in a petition must be present at the hearing and, if brought from detention to the hearing, may not appear clothed in institutional clothing.

(5) In a hearing on a petition under this section, the general public may not be excluded when the hearing is held on a contested offense to which publicity must be allowed under subsection (2) of 41-5-601.

(6) If, on the basis of a valid admission by a youth of the allegations of the petition or after the hearing required by this section, a youth is found to be a delinquent youth or a youth in need of supervision, the court shall schedule a dispositional hearing under this chapter.

(7) When a jury trial is required in a case, it may be held before a jury selected as provided in Title 25, chapter 7, part 2, and M.R.Civ.P., Rule 47.

History: En. 10-1220 by Sec. 20, Ch. 329, L. 1974; amd. Sec. 7, Ch. 100, L. 1977; amd. Sec. 1, Ch. 344, L. 1977; R.C.M. 1947, 10-1220; amd. Sec. 1, Ch. 668, L. 1979; amd. Sec. 1, Ch. 469, L. 1981.

Compiler's Comments

1981 Amendment: In (5), substituted "when the hearing is held on a contested offense to which publicity must be allowed under subsection (2) of 41-5-601" for "except when the court determines a closed hearing to be in the youth's best interest".

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Trial by jury, Art. II, sec. 26, Mont. Const.
Sittings of court — when private, 3-1-313.
Copies of proceedings, 3-5-604.
Reporter's report prima facie evidence, 3-5-612.
Publicity, 41-5-601.

41-5-522. Dispositional hearing. (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing. The dispositional hearing may involve a determination of financial liability as provided in 41-3-1123 and 41-3-1124.

(2) Before conducting the dispositional hearing, the court shall direct that a social summary or predisposition report be made in writing by a probation officer concerning the youth, his family, his environment, and other matters relevant to the need for care or rehabilitation or disposition of the case. The youth court may have the youth examined, and the results of the examination shall be made available to the court as part of the social summary or predisposition report. The court may order the examination of a parent or guardian who gives his consent and whose ability to care for or supervise a youth is at issue before the court. The results of such examination shall be included in the social summary or predisposition report. The youth, his parents, guardian, or counsel shall have the right to subpoena all persons who have prepared any portion of the social summary or predisposition report and shall have the right to cross-examine said parties at the dispositional hearing.

(3) Defense counsel shall be furnished with a copy of the social summary or predisposition report and psychological report prior to the dispositional hearing.

(4) The dispositional hearing shall be conducted in the manner set forth in subsections (3), (4), and (5) of 41-5-521. The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of the youth and the public. Such evidence shall include, but not be limited to, the social summary and predisposition report provided for in subsection (2) of this section.

(5) If the court finds that it is in the best interest of the youth, the youth, his parents, or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation.

(6) In determining whether restitution, as authorized by 41-5-523(1)(f), is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;
(b) ability of the youth to pay;
(c) ability of the parents or legal guardian to pay;
(d) amount of damage to the victim; and

(e) legal remedies of the victim, however the ability of the victim or his insurer to stand any loss may not be considered in any case.

History: En. 10-1221 by Sec. 21, Ch. 329, L. 1974; R.C.M. 1947, 10-1221; amd. Sec. 4, Ch. 246, L. 1979; amd. Sec. 9, Ch. 567, L. 1979; amd. Sec. 5, Ch. 484, L. 1981; amd. Sec. 31, Ch. 465, L. 1983.

Compiler's Comments

1983 Amendment: In (1), changed "41-5-805" to "41-3-1123" and "41-5-806" to "41-3-1124".

1981 Amendment: Added the provision concerning ability to stand any loss to (6)(e).

Cross-References

Sittings of court — when private, 3-1-313.

Montana Youth Court Act — declaration of purpose, 41-5-102.

Disposition permitted under informal adjustment, 41-5-403.

Powers and duties of probation officers, 41-5-703.

Subpoena of witnesses, 46-11-313.

41-5-523. Disposition of delinquent youth and youth in need of supervision. (1) If a youth is found to be delinquent or in need of supervision, the court may enter its judgment making the following disposition:

(a) place the youth on probation;

(b) place the youth for substitute care into a youth care facility as defined in 41-3-1102 or a home approved by the court;

(c) place the youth in a private agency responsible for the care and rehabilitation of such a youth;

(d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody does not authorize the department of institutions to place the youth in a state youth correctional facility and such custody may not continue for a period of more than 6 months without a subsequent court order after notice and hearing;

(e) such further care and treatment or evaluation that the court considers beneficial to the youth; or

(f) order restitution by the youth.

(2) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision, order the youth to be evaluated by the department of institutions for a period not to exceed 45 days of evaluation at a reception and evaluation center for youths.

(3) At any time after a youth has been taken into custody, the court may request that the youth be evaluated at the Montana youth treatment center, for a period not to exceed 60 days, for the sole purpose of advising the court as to whether the youth is seriously mentally ill, as defined in 53-21-102, but the court must first find that reasonable grounds exist to believe that the youth is suffering from a mental disorder as defined in 53-21-102.

(4) No evaluation of a youth may be performed at the Montana state hospital unless such youth is transferred to the district court under 41-5-206.

(5) If the court determines that a delinquent youth or youth in need of supervision is in need of treatment at the Montana youth treatment center, the court must first determine, based on testimony of a professional person, as defined in 53-21-102, that the youth is seriously mentally ill as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119.

(6) Upon a finding of serious mental illness, the court may commit a delinquent youth to the department of institutions and recommend that the youth be placed at the Montana youth treatment center. Upon release or discharge from the center, if the court order has not expired or if the youth is less than 21 years of age, he must be retained under the supervision of the department until the expiration of the court order or until he attains the age of 21.

(7) If the court finds that placement in a youth care facility other than a youth group home or youth foster home is necessary and in the best interests of the youth and the community, the court shall determine if the youth can receive appropriate treatment in a youth care facility located in Montana as follows:

(a) If the court finds the youth can receive appropriate treatment in a youth care facility located in Montana that will accept the youth, the court may not place the youth in a youth care facility located outside this state unless an out-of-state facility can provide appropriate treatment that:

(i) can be obtained at a cost less than that offered by any available facility in this state; and

(ii) is available in closer proximity to the youth's place of residence than any facility located in this state.

(b) When the department of social and rehabilitation services is ordered to pay the costs of caring for the child in a youth care facility other than a youth foster home or youth group home, the court shall provide the department at least 5 days' written notice and opportunity to be heard before ordering the placement of the youth.

(8) No youth may be committed or transferred to a penal institution or other facility used for the execution of sentence of adult persons convicted of crimes.

(9) Any order of the court may be modified at any time. In the case of a youth committed to the department of institutions, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(10) Whenever the court vests legal custody in an agency, institution, or department, it must transmit with the dispositional judgment copies of a medical report and such other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(11) The order of commitment to the department of institutions shall read as follows:

ORDER OF COMMITMENT

State of Montana)
) ss.
County of ....)

In the district court for the .... Judicial District.

On the .... day of ...., 19.., ..., a minor of this county, ... years of age, was brought before me charged with ..... Upon due proof I find that .... is a suitable person to be committed to the department of institutions.

It is ordered that .... be committed to the department of institutions until .....

The names, addresses, and occupations of the parents are:

Name Address Occupation

....

....

The names and addresses of their nearest relatives are:

....

....

Witness my hand this .... day of ...., A.D. 19...

....

Judge

History: En. 10-1222 by Sec. 22, Ch. 329, L. 1974; amd. Sec. 10, Ch. 571, L. 1977; R.C.M. 1947, 10-1222; amd. Sec. 2, Ch. 29, L. 1979; amd. Sec. 5, Ch. 246, L. 1979; amd. Sec. 2, Ch. 129, L. 1983; amd. Sec. 2, Ch. 233, L. 1983; amd. Sec. 27, Ch. 361, L. 1983; amd. Sec. 8, Ch. 363, L. 1983; amd. Sec. 5, Ch. 465, L. 1983; amd. Sec. 6, Ch. 531, L. 1985; amd. Sec. 1, Ch. 612, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 531 inserted (7).

Chapter 612 in (2) near end, after "youths", deleted "except that if the evaluation is to be done at the Montana youth treatment center, the commitment provisions of 53-21-505 must be followed and no evaluation of a youth may be done at Montana state hospital"; inserted (3) through (6); and deleted former (6) that read: "Except as provided in 53-21-507, if the custody of a youth is transferred to the department of institutions under subsection (1), the youth may not be committed to the Montana youth treatment center unless the commitment provisions of 53-21-505 are followed."

1983 Amendments: Chapter 129, after (1)(e), inserted "or"; and in (4) (now (9)), inserted second sentence.

Chapter 233 deleted former (2)(b), which read: "in the case of a delinquent youth 16 years or older whom the court considers a suitable person for placement at a youth forest camp, notify the director of the department of institutions of the finding. The director of the department of institutions shall then designate to the court the facility to which the youth shall be delivered for evaluation. The court may then commit the youth to the department of institutions for a period not to exceed 45 days for the purpose of evaluation as to the youth's suitability for placement and order the youth delivered for evaluation to the youth facility designated by the director. If after the evaluation the department of institutions reports to the court that such child is suitable for placement in a youth forest camp and if there is space available at a camp, the court may then commit such child directly to the youth forest camp under the terms of commitment of this chapter. If the department of institutions reports and states the reasons to the court why the youth is not suitable for placement, the youth shall be returned to the court for such further disposition as the court may consider advisable under the provisions of this chapter. The costs of transporting the youth to the designated youth facility for evaluation and cost of returning the youth to the court shall be borne by the county of residence of the youth."; and at end of (3) (now (8)), deleted "except as provided by subsection (2)(b)".

Chapter 363, at end of (2), inserted except clause (now deleted) and Ch. 361 substituted "Montana state hospital" for "Warm Springs state hospital" in that clause; Ch. 363 inserted (6) (now deleted).

Chapter 465 made the following changes: in (1)(b), substituted present language for "place in a licensed foster home or a home approved by the court"; at end of (1)(c), deleted "including but not limited to a district youth guidance home"; and at end of (1)(e), deleted "consistent with subsection (1)(d) of this section".

Cross-References

Foster care payments for Youth Court placements, 41-3-1121.

Order for financial support, 41-3-1124.

Retention of jurisdiction, 41-5-205.

Disposition permitted under informal adjustment, 41-5-403.

Powers and duties of probation officers, 41-5-703.

Unlawful possession of an intoxicating substance by children, 45-5-624.

Youthful offenders, Title 53, ch. 30, part 2.

Youth forest camps and work programs, 53-30-205.

Transfer of child to other facility or institution, 53-30-211.

41-5-524. Consent decree with petition. (1) At any time after the filing of a petition alleging delinquency or need of supervision and before the entry of a judgment, the court may, on motion of counsel for the youth or on the court's own motion, suspend the proceedings and continue the youth under supervision under terms and conditions negotiated with probation services and agreed to by all necessary parties. The court's order continuing the child under supervision under this section shall be known as a "consent decree". The procedures used and dispositions permitted under this section shall conform to the procedures and dispositions specified in 41-5-401 through 41-5-403 relating to consent adjustments without petition.

(2) If the youth or his counsel objects to a consent decree, the court shall proceed to findings, adjudication, and disposition of the case.

(3) If, either prior to discharge by probation services or expiration of the consent decree, a new petition alleging delinquency or need of supervision is filed against the youth or if the youth fails to fulfill the expressed terms and conditions of the consent decree, the petition under which the youth was continued under supervision may be reinstated in the discretion of the county attorney in consultation with probation services. In the event of reinstatement, the proceeding on the petition shall be continued to conclusion as if the consent decree had never been entered.

(4) A youth who is discharged by probation services or who completes a period under supervision without reinstatement of the original petition may not again be proceeded against in any court for the same offense alleged in the petition, and the original petition shall be dismissed with prejudice. Nothing in this subsection precludes a civil suit against the youth for damages arising from his conduct.

(5) In all cases where the terms of the consent decree shall extend for a period in excess of 6 months, the probation officer shall at the end of each 6-month period submit a report which shall be reviewed by the court.

History: En. 10-1224 by Sec. 24, Ch. 329, L. 1974; amd. Sec. 8, Ch. 100, L. 1977; R.C.M. 1947, 10-1224.

Cross-References

Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

Liability of minor or person of unsound mind for own torts, 27-1-711.

Order for financial support, 41-3-1124.

Retention of jurisdiction, 41-5-205.

Preliminary investigation and disposition, 41-5-301.

Powers and duties of probation officers, 41-5-703.

41-5-525 through 41-5-530 reserved.

41-5-531. Posttrial motions. All posttrial motions and other remedies available to an adult in a criminal proceeding under the Montana Code of Criminal Procedure are available to a youth proceeded against under this chapter.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(7).

Cross-References

Motion for new trial, Title 46, ch. 16, part 7.

Appellate review of legal sentences, Title 46, ch. 18, part 9.

Postconviction hearing, Title 46, ch. 21.

41-5-532. Appeals. (1) Any party other than the state may appeal from a judgment of the court to the supreme court in the manner provided by law. The appeal shall be heard by the supreme court upon the files, records, and transcript of the evidence of the juvenile court.

(2) The appeal to the supreme court does not stay the judgment appealed from, but the supreme court may order a stay upon application and hearing consistent with the provisions of this chapter if suitable provision is made for the care and custody of the youth. If the order appealed from grants the legal custody of the youth to or withholds it from one or more of the parties to the appeal, the appeal shall be heard at the earliest practicable time.

History: En. 10-1225 by Sec. 25, Ch. 329, L. 1974; R.C.M. 1947, 10-1225.

Cross-References

Supreme Court — appellate jurisdiction, 3-2-203.

Appeals, Title 46, ch. 20.

41-5-533. Probation revocation — disposition. (1) A youth on probation incident to an adjudication that he is a delinquent youth or a youth in need of supervision and who violates a term of such probation may be proceeded against in a probation revocation proceeding. A proceeding to revoke probation shall be done by filing in the original proceeding a petition styled "petition to revoke probation".

(2) Petitions to revoke probation shall be screened, reviewed, and prepared in the same manner and shall contain the same information as petitions alleging delinquency or need of supervision. Procedures of the Montana Youth Court Act regarding taking into custody and detention shall apply. The petition shall state the terms of probation alleged to have been violated and the factual basis for such allegations.

(3) The standard of proof in probation revocation proceedings is the same standard used in probation revocation of an adult and the hearing shall be before the youth court without a jury. In all other respects proceedings to revoke probation are governed by the procedures, rights, and duties applicable to proceedings on petitions alleging that the youth is delinquent or a youth in need of supervision. If a youth is found to have violated a term of his probation, the youth court may make any judgment of disposition that could have been made in the original case.

History: En. 10-1228 by Sec. 28, Ch. 329, L. 1974; R.C.M. 1947, 10-1228.

Cross-References

Petition — form and content, 41-5-501.

Powers and duties of probation officers, 41-5-703.

Arrest when violations of probation alleged, 46-23-1012.

Action of court after arrest, 46-23-1013.

Report to and action by the Board, 46-23-1025.

Part 6

Confidentiality of Proceedings — Records

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

41-5-601. Publicity. (1) No publicity shall be given to the identity of an arrested youth or to any matter or proceeding in the youth court involving a youth proceeded against as, or found to be, a delinquent youth or youth in need of supervision except as provided in subsection (2).

(2) When a petition is filed under 41-5-501, publicity may not be withheld as to the identity of any youth formally charged with or proceeded against or

found to be a delinquent youth as a result of the commission of any offense that would be punishable as a felony if the youth were an adult.

History: **En. 10-1241 by Sec. 41, Ch. 329, L. 1974; R.C.M. 1947, 10-1241; amd. Sec. 2, Ch. 469, L. 1981; amd. Sec. 10, Ch. 15, L. 1985.**

Compiler's Comments

1985 Amendment: In (2) substituted "41-5-501" for "this section".

1981 Amendment: Substituted "subsection (2)" for "41-5-521(5)" in (1); and added subsection (2).

Cross-References

Sittings of court — when private, 3-1-313.

Child abuse, neglect, and dependency — confidentiality of case records, 41-3-205.

Classification of offenses, 45-1-201.

Felony defined, 45-2-101.

41-5-602. Law enforcement records. (1) No law enforcement records concerning a youth, except traffic records, may be open to public inspection or their contents disclosed to the public unless the records are directly related to an offense to which publicity must be allowed under subsection (2) of 41-5-601 or unless inspection is ordered by the court.

(2) Inspection of law enforcement records concerning a youth, which records are not open to public inspection under subsection (1), is permitted prior to the sealing of the records by:

(a) a youth court having the youth currently before it in any proceeding;

(b) the officers of agencies having legal custody of the youth and those responsible for his supervision after release;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the law enforcement agency;

(d) law enforcement officers of Montana, when necessary for the discharge of their immediate duties;

(e) a district court in which the youth is convicted of a criminal offense, for the purpose of a presentence investigation;

(f) the county attorney; or

(g) the youth, his parent, guardian, or counsel.

History: **En. 10-1230 by Sec. 30, Ch. 329, L. 1974; amd. Sec. 10, Ch. 100, L. 1977; R.C.M. 1947, 10-1230; amd. Sec. 3, Ch. 469, L. 1981.**

Compiler's Comments

1981 Amendment: In (1), substituted "unless the records are directly related to an offense to which publicity must be allowed under subsection (2) of 41-5-601 or unless inspection is ordered by the court" for "unless so ordered by the court"; and in (2), inserted "which records are not open to public inspection under subsection (1)" in the first sentence.

Cross-References

Fingerprints and photographs, 41-5-304.

Records and reports of traffic convictions, Title 61, ch. 11.

41-5-603. Youth court records. (1) Youth court records, including social, medical, and psychological records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers, are open to inspection prior to the sealing of the records only to the following:

(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;

(d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon such party;

(e) the county attorney;

(f) the youth who is the subject of the report or record, after he has been emancipated or reaches the age of majority.

(2) All or any part of records information secured from records listed in subsection (1) of this section, when presented to and used by the court in a proceeding under this chapter, shall also be made available to the counsel for the parties to the proceedings.

(3) All other court records, including docket, petitions, motions, and other papers filed in a case, transcripts of testimony, findings, verdicts, orders, and decrees, shall be open to inspection by those persons and agencies listed in subsection (1) of this section and the parties to the proceedings and their counsel.

(4) All information obtained in discharge of an official duty by any officer or other employee of the youth court shall be privileged and shall not be disclosed to anyone other than the judge and others entitled under this chapter to receive such information, unless otherwise ordered by the judge.

(5) After youth court records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers are sealed, they are not open to inspection except, upon order of the youth court, for good cause to:

(a) those persons and agencies listed in subsection (1); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority.

History: En. 10-1231 by Sec. 31, Ch. 329, L. 1974; R.C.M. 1947, 10-1231; amd. Sec. 1, Ch. 507, L. 1979.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Copies of proceedings, 3-5-604.

Confidential communications made to public officer, 26-1-810.

Presentence investigation, 46-18-111.

Supervision of probationers and parolees, Title 46, ch. 23, part 10.

41-5-604. Disposition of records. (1) All court findings, orders, judgments, and the legal and social files and records of the court, probation services, and law enforcement agencies pertaining to a youth coming under this chapter shall be physically sealed when the youth reaches the age of 18 years.

(2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the above records and files shall be physically sealed upon termination of the extended jurisdiction.

(3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, any agency or department that has in its possession copies of the records so sealed shall also seal or destroy such copies of records. Anyone violating the provisions of this subsection shall be subject to contempt of court.

(4) Nothing herein contained shall prohibit the destruction of such records with the consent of the youth court judge or county attorney after 10 years from the date of sealing. The records of youths who were 28 years old or older on July 1, 1974, may be destroyed with the consent of the youth court judge or county attorney.

(5) This section shall not apply to youth traffic records or to records directly related to an offense to which publicity must be allowed under subsection (2) of 41-5-601.

History: En. 10-1232 by Sec. 32, Ch. 329, L. 1974; amd. Sec. 1, Ch. 59, L. 1975; R.C.M. 1947, 10-1232; amd. Sec. 2, Ch. 507, L. 1979; amd. Sec. 4, Ch. 469, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "or to records directly related to an offense to which publicity must be allowed under subsection (2) of 41-5-601" at the end of (5).

Cross-References

Contempts, Title 3, ch. 1, part 5.

Minors and adults defined, 41-1-101.

Continuing jurisdiction of Youth Court, 41-3-1114.

Records and reports of traffic convictions, Title 61, ch. 11.

Part 7

Probation Officers

Part Cross-References

Probation, parole, and clemency, Title 46, ch. 23.

Cases of juveniles excluded, 46-23-102.

41-5-701. Appointment of probation officers. The youth court judge of each judicial district shall appoint such necessary probation officers as are required to carry out the purpose and intent of this chapter. He shall appoint such part-time probation officers as shall be required. The qualifications for part-time probation officers must approximate those required for probation officers insofar as possible. A chief probation officer must be appointed by the judge to supervise the youth division offices in the judicial district. The judge shall also insure that the youth division offices are staffed with necessary office personnel and that the offices are properly equipped to effectively carry out the purpose and intent of this chapter. No person while serving as a law enforcement officer may be appointed or perform the duties of a full-time or part-time probation officer.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(1); amd. Sec. 3, Ch. 29, L. 1979.

Cross-References

Youth Court committee, 41-5-105.

Youth Court Judge, 41-5-201.

Powers of Department of Institutions, 46-23-1002.

41-5-702. Qualifications of probation officers. (1) Any person appointed as a chief probation officer must have the following qualifications:

(a) a master's degree in the behavioral sciences;

(b) a bachelor's degree from an accredited college or university in the behavioral sciences and at least 1 year's experience in work of a nature related to the duties of a probation officer as set forth in 41-5-703; or

(c) a bachelor's degree in any field and at least 3 years' experience in work related to the duties of a probation officer as set forth in 41-5-703.

(2) The judge may appoint any reputable person as a probation officer who has had experience in work of a nature related to the duties of a chief probation officer, provided preference shall be given to persons with the qualifications set forth in subsection (1).

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(2).

Cross-References

Qualifications of probation and parole officers, 46-23-1003.

41-5-703. Powers and duties of probation officers. (1) A probation officer shall:

(a) perform the duties set out in 41-5-401;

(b) make predisposition studies and submit reports and recommendations to the court;

(c) supervise, assist, and counsel youth placed on probation or under his supervision;

(d) perform any other functions designated by the court.

(2) A probation officer shall have no power to make arrests or to perform any other law enforcement functions in carrying out his duties except that a probation officer may take into custody any youth who violates either his probation or a lawful order of the court.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(4), (5).

Cross-References

Preliminary investigation and disposition, 41-5-301.

Dispositional hearing, 41-5-522.

Consent decree with petition, 41-5-524.

Supervision on probation, 46-23-1011.

Arrest when violations of parole alleged, 46-23-1012.

41-5-704. Salary and expenses. (1) A chief probation officer shall receive for his services a salary specified by the court, depending on the formal training and experience of each respective officer, but such salary may be no lower than $17,000 a year and no higher than $22,000 a year. In addition to such salary, the court shall, on or before July 1 of each year, adjust and fix the salary of the chief probation officer for a cost-of-living increase by adding to his annual salary on July 1 of that year an increment of 70% of the last previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. The cost-of-living increment for the fiscal year beginning July 1 of each subsequent fiscal year shall be added to all cost-of-living increments granted for previous years. The salary of such officer shall be apportioned among and paid by each of the counties in which such officer is appointed to act, in proportion to the cost allocation established under 41-5-104, except where such officer is appointed for one county, such county shall pay the entire salary.

(2) In addition to the compensation provided in subsection (1), each chief probation officer with more than 5 years of service is entitled to receive an annual 1% longevity allowance. Each longevity allowance must be based on the officer's current salary and begins on the officer's annual employment anniversary date. The allowance must be paid in equal monthly installments.

(3) For all authorized travel incident to his official duties in connection with the investigation, supervision, and transportation of youth, the chief probation officer shall, in addition to his office salary, be reimbursed as provided in 2-18-501 through 2-18-503.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(part); amd. Sec. 1, Ch. 605, L. 1979; amd. Sec. 1, Ch. 534, L. 1981; amd. Sec. 1, Ch. 332, L. 1983; amd. Sec. 2, Ch. 580, L. 1985.

Compiler's Comments

1985 Amendment: In last sentence of (1) substituted "in proportion to the cost allocation established under 41-5-104" for "in proportion to the assessed valuation of such counties for the same year".

1983 Amendment: At beginning of second sentence of (1), substituted present language for "The court shall, on or before July 1, 1982, and on or before July 1 of each year thereafter, adjust and fix"; in (1) substituted "on July 1 of that year" for "on July 1, 1981" and "beginning July 1 of each subsequent" for "beginning July

1, 1982, and for each subsequent"; inserted (2); in (3) before "probation officer" inserted "chief".

Section 3, Ch. 332, L. 1983, provided: "No retroactive application. This act does not apply retroactively, and no person is entitled to receive under this act a longevity allowance of more than 1% in any year."

1981 Amendment: Changed, in the first sentence of (1), the method of establishing the compensation of a chief probation officer from either a sum set by the court or a yearly salary set by the judge employing him of not less than $15,000 or more than $20,000 to a salary specified by the court of not less than $17,000 nor more than $22,000; and added the second and third sentences of (1).

Cross-References

District Court budget, 7-6-2351.

Youth Court Judge, 41-5-201.

41-5-705. Deputy probation officers — salary. (1) The judge having jurisdiction of juvenile matters may also appoint such additional persons, giving preference to persons having the qualifications suggested for appointment as the chief probation officer, to serve as deputy probation officers as the judge deems necessary, their salaries to be fixed by the judge. Such salaries shall not exceed 90% or be less than 60% of the salary of the chief probation officer excluding longevity payments provided in 41-5-704.

(2) In addition to such salary, each deputy probation officer with more than 5 years of service is entitled to receive an annual 1% longevity allowance. Each longevity allowance must be based on the officer's current salary and begins on the officer's annual employment anniversary date. The allowance must be paid in equal monthly installments.

(3) If a deputy probation officer is promoted to chief probation officer, his salary may not be decreased by the appointment. He shall retain all longevity allowances earned during his service as a deputy.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(part); amd. Sec. 2, Ch. 605, L. 1979; amd. Sec. 2, Ch. 332, L. 1983.

Compiler's Comments

1983 Amendment: At end of (1), inserted "excluding longevity payments provided in 41-5-704"; inserted (2) and (3).

Section 3, Ch. 332, L. 1983, provided: "No retroactive application. This act does not apply retroactively, and no person is entitled to receive under this act a longevity allowance of more than 1% in any year."

Cross-References

District Court budget, 7-6-2351.

Youth Court Judge, 41-5-201.

Part 8

Custodial Care

41-5-801. Renumbered 41-3-1121. Sec. 31, Ch. 465, L. 1983.

41-5-802. Shelter care and detention facilities. (1) (a) In all counties the county commissioners may provide, by purchase, lease, or otherwise, a place to be known as the youth detention facility, which shall not be used for the confinement of adult persons charged with criminal offenses, where delinquent youths and youths in need of supervision may be detained until final disposition, which place shall be maintained by the county as in other like cases.

(b) The judge having jurisdiction may appoint such personnel as required, who shall have charge of said facility and of the youths detained therein.

(c) The compensation of such personnel shall be fixed by the court, and such compensation and the maintaining of such facility shall be paid out of the county treasury which may be supplemented by state appropriation and federal funds.

(2) (a) Youth courts and nonprofit corporations may provide by purchase, lease, or otherwise, a place to be known as a shelter care facility.

(b) Such facility shall be physically unrestricting and may be used to provide shelter care for youth alleged or adjudicated delinquent, in need of supervision, or in need of care.

(c) Such facility shall be separate and apart from any facility housing adults charged with criminal offenses.

(d) State appropriations and federal funds may be received by the youth court or private nonprofit corporations for establishment, maintenance, or operation of such facility.

(e) Such facility shall be furnished in a comfortable manner and be as nearly as possible like a family home.

History: En. Sec. 26, Ch. 227, L. 1943; Sec. 10-627, R.C.M. 1947; amd. and redes. 10-1237 by Sec. 37, Ch. 329, L. 1974; amd. Sec. 13, Ch. 571, L. 1977; R.C.M. 1947, 10-1237.

Cross-References

District Court budget, 7-6-2351.

County levy for District Court expenses, 7-6-2511.

Youth Court Judge, 41-5-201.

Detention and shelter care of youth, 41-5-305.

Place of shelter care or detention, 41-5-306.

41-5-803. Repealed. Sec. 32, Ch. 465, L. 1983.

History: En. Sec. 14, Ch. 227, L. 1943; amd. Sec. 7, Ch. 276, L. 1947; Sec. 10-615, R.C.M. 1947; amd. and redes. 10-1238 by Sec. 38, Ch. 329, L. 1974; amd. Sec. 8, Ch. 450, L. 1977; R.C.M. 1947, 10-1238; amd. Sec. 10, Ch. 567, L. 1979.

41-5-804. Renumbered 41-3-1105. Sec. 31, Ch. 465, L. 1983.

41-5-805. Combined with 41-3-405, renumbered 41-3-1123. Sec. 31, Ch. 465, L. 1983.

41-5-806. Combined with 41-3-407, renumbered 41-3-1124. Sec. 31, Ch. 465, L. 1983.

41-5-807. Renumbered 41-3-1115. Sec. 31, Ch. 465, L. 1983.

Part 9

District Youth Guidance Homes (Repealed. Sec. 32, Ch. 465, L. 1983)

Part Compiler's Comments

Histories of Repealed Sections:

41-5-901. En. Sec. 1, Ch. 427, L. 1971; Sec. 10-1101, R.C.M. 1947; amd. and redes. 10-1242 by Sec. 42, Ch. 329, L. 1974; amd. Sec. 12, Ch. 100, L. 1977; amd. Sec 14, Ch. 571, L. 1977; R.C.M. 1947, 10-1242.

41-5-902. En. Sec. 10, Ch. 427, L. 1971; Sec. 10-1110, R.C.M. 1947; redes. 10-1251 by Sec. 51, Ch. 329, L. 1974; amd. Sec. 16, Ch. 100, L. 1977; R.C.M. 1947, 10-1251.

41-5-903. En. Sec. 3, Ch. 427, L. 1971; Sec. 10-1103, R.C.M. 1947; redes. 10-1244 by Sec. 44, Ch. 329, L. 1974; R.C.M. 1947, 10-1244.

41-5-904 through 41-5-910 reserved.

41-5-911. En. Sec. 8, Ch. 427, L. 1971; Sec. 10-1108, R.C.M. 1947; amd. and redes. 10-1249 by Sec. 49, Ch. 329, L. 1974; amd. Sec. 15, Ch. 100, L. 1977; amd. Sec. 9, Ch. 450, L. 1977; R.C.M. 1947, 10-1249.

41-5-912. En. Sec. 4, Ch. 427, L. 1971; Sec. 10-1104, R.C.M. 1947; amd. and redes. 10-1245 by Sec. 45, Ch. 329, L. 1974; R.C.M. 1947, 10-1245.

41-5-913. En. Sec. 11, Ch. 427, L. 1971; Sec. 10-1111, R.C.M. 1947; redes. 10-1252 by Sec. 52, Ch. 329, L. 1974; amd. Sec. 17, Ch. 100, L. 1977; R.C.M. 1947, 10-1252.

41-5-914 through 41-5-920 reserved.

41-5-921. En. Sec. 6, Ch. 427, L. 1971; Sec. 10-1106, R.C.M. 1947; amd. and redes. 10-1247 by Sec. 47, Ch. 329, L. 1974; R.C.M. 1947, 10-1247; amd. Sec. 1, Ch. 141, L. 1981.

41-5-922. En. Sec. 9, Ch. 427, L. 1971; Sec. 10-1109, R.C.M. 1947; amd. and redes. 10-1250 by Sec. 50, Ch. 329, L. 1974; R.C.M. 1947, 10-1250.

41-5-923. En. Sec. 5, Ch. 427, L. 1971; Sec. 10-1105, R.C.M. 1947; amd. and redes. 10-1246 by Sec. 46, Ch. 329, L. 1974; amd. Sec. 13, Ch. 100, L. 1977; R.C.M. 1947, 10-1246.

41-5-924. En. Sec. 7, Ch. 427, L. 1971; Sec. 10-1107, R.C.M. 1947; amd. and redes. 10-1248 by Sec. 48, Ch. 329, L. 1974; amd. Sec. 14, Ch. 100, L. 1977; R.C.M. 1947, 10-1248.

CHAPTER 6

INTERSTATE COMPACT ON JUVENILES

Part 1 — Text of Compact

Section

41-6-101. Enactment — provisions.
41-6-102. Juvenile compact administrator.
41-6-103. Supplementary agreements.
41-6-104. Financial arrangements.
41-6-105. Responsibilities of courts, state departments, agencies, and officers.
41-6-106. Additional procedures not precluded.

Part 1

Text of Compact

41-6-101. Enactment — provisions. The Interstate Compact on Juveniles as contained herein is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

Article I. Findings and Purposes

(1) Juveniles who are not under proper supervision and control or who have absconded, escaped, or run away are likely to endanger their own health, morals, and welfare and the health, morals, and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to:

(a) cooperative supervision of delinquent juveniles on probation or parole;

(b) the return, from one state to another, of delinquent juveniles who have escaped or absconded;

(c) the return, from one state to another, of nondelinquent juveniles who have run away from home; and

(d) additional measures for the protection of juveniles and of the public which any two or more of the party states may find desirable to undertake cooperatively.

(2) In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformative, and protective policies which guide

their laws concerning delinquent, neglected, or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

Article II. Existing Rights and Remedies

All remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies, and procedures and shall not be in derogation of parental rights and responsibilities.

Article III. Definitions

For the purposes of this compact, "delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto; "court" means any court having jurisdiction over delinquent, neglected, or dependent children; "state" means any state, territory, or possessions of the United States, the District of Columbia, and the commonwealth of Puerto Rico; and "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

Article IV. Return of Runaways

(1) The parent, guardian, person, or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person, or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged

to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person, or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected, or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person, or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

(2) Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person, or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding 90 days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense of juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which

he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(3) The state to which a juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.

(4) "Juvenile" as used in this article means any person who is a minor under the law of the state of residence of the parent, guardian, person, or agency entitled to the legal custody of such minor.

Article V. Return of Escapees and Absconders

(1) The appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile if known at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

(2) Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after

a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time not exceeding 90 days as will enable his detention under a detention order issued on a requisition pursuant to this article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(3) The state to which a delinquent juvenile is returned under this article shall be responsible for payment of the transportation cost of such return.

Article VI. Voluntary Return Procedure

Any delinquent juvenile who has absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of Article IV(1) and (2) or of Article V(1) and (2), may consent to his immediate return to the state from which he absconded, escaped, or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located, and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

Article VII. Cooperative Supervision of Probationers and Parolees

(1) The duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian, or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies, and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian, or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted, the sending state may transfer supervision accordingly.

(2) Each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

(3) After consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

(4) The sending state shall be responsible under this article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

Article VIII. Responsibility for Costs

(1) The provisions of Articles IV(3), V(3), and VII(4) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state or

between a party state and its subdivisions as to the payment of cost or responsibilities therefor.

(2) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency, or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV(3), V(3), or VII(4) of this compact.

Article IX. Detention Practices

To every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail, or lockup or be detained or transported in association with criminal, vicious, or dissolute persons.

Article X. Supplementary Agreements

The duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment, and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment, and rehabilitation. Such care, treatment, and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall:

(1) provide the rates to be paid for the care, treatment, and custody of such delinquent juveniles, taking into consideration the character of facilities, services, and subsistence furnished;

(2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment, and custody;

(3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile;

(4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;

(5) provide for reasonable inspection of such institutions by the sending state;

(6) provide that the consent of the parent, guardian, person, or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and

(7) make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

Article XI. Acceptance of Federal and Other Aid

Any state party to this compact may accept any and all donations, gifts, and grants of money, equipment, and services from the federal or any local government or any agency thereof and from any person, firm, or corporation for any of the purposes and functions of this compact and may receive and utilize the same subject to the terms, conditions, and regulations governing such donations, gifts, and grants.

Article XII. Compact Administrators

The governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules to carry out more effectively the terms and provisions of this compact.

Article XIII. Execution of Compact

This compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

Article XIV. Renunciation

This compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending 6 months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under Article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided by such supplementary agreements and shall not be subject to the 6 months' renunciation notice of the present article.

Article XV. Severability

The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 76, L. 1967; R.C.M. 1947, 10-1001.

Cross-References

Right to counsel, 41-5-511.

Appointment of guardian ad litem, 41-5-512.

Disposition of delinquent youth and youth in need of supervision, 41-5-523.

Probation revocation — disposition, 41-5-533.

Circumstances in which a peace officer may make an arrest, 46-6-401.

Uniform Criminal Extradition Act, Title 46, ch. 30.

Department to supervise importation and exportation of children, 53-4-114.

Commitment expenses — arrangement for transportation, 53-30-210.

Apprehension and return of child leaving juvenile facility without permission, 53-30-214.

Hearing on alleged violation of aftercare agreement — right to appeal outcome, 53-30-229.

41-6-102. Juvenile compact administrator. Pursuant to said compact, the governor is hereby authorized and empowered to designate an officer who shall be the compact administrator and who, acting jointly with like officers of other party states, shall promulgate rules to carry out more effectively the terms of the compact. Said compact administrator shall serve subject to the pleasure of the governor. The compact administrator is hereby authorized, empowered, and directed to cooperate with all departments, agencies, and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state thereunder.

History: En. Sec. 2, Ch. 76, L. 1967; R.C.M. 1947, 10-1002.

Cross-References

Appointing power, Art. VI, sec. 8, Mont. Const.

Powers and duties of Governor, 2-15-201.

41-6-103. Supplementary agreements. The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to the compact. In the event that such supplementary agreement shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, said supplementary agreement shall have no force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

History: En. Sec. 3, Ch. 76, L. 1967; R.C.M. 1947, 10-1003.

Cross-References

Powers and duties of Department of Institutions, 53-1-203.

41-6-104. Financial arrangements. The compact administrator, subject to the approval of the department of administration, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder.

History: En. Sec. 4, Ch. 76, L. 1967; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 10-1004.

Cross-References

Authorization for disbursements — submission of claim to Department of Administration, 17-8-201.

41-6-105. Responsibilities of courts, state departments, agencies, and officers. The courts, departments, agencies, and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions.

History: En. Sec. 5, Ch. 76, L. 1967; R.C.M. 1947, 10-1005.

41-6-106. Additional procedures not precluded. In addition to any procedure provided in Articles IV and VI of the compact for the return of any runaway juvenile, the particular states, the juvenile or his parents, the courts or other legal custodian involved may agree upon and adopt any other plan or procedure legally authorized under the laws of this state and the other respective party states for the return of any such runaway juvenile.

History: En. Sec. 6, Ch. 76, L. 1967; R.C.M. 1947, 10-1006.

Cross-References

Uniform Criminal Extradition Act, Title 46, ch. 30.

TITLES 42 AND 43

RESERVED

TITLE 44

LAW ENFORCEMENT

Ch.
1. Highway Patrol.
2. Investigation, Communication, and Identification.
3. Montana Forensic Science System Act.
4. Miscellaneous Functions of Department of Justice.
5. Criminal Justice Information.
Chapters 6 through 9 reserved.
10. Law Enforcement Academy.
11. Mutual Assistance — Rights of Assisting Officers.
12. Seizures Related to Controlled Substances.
13. Special Law Enforcement Assistance Funding.

CHAPTER 1

HIGHWAY PATROL

Part 1 — General Provisions

Section
44-1-101. Creation of highway patrol.
44-1-102. General duties of department of justice.
44-1-103. Authority to make rules.
44-1-104. Duty to furnish governor with transportation.
44-1-105. Department of justice to furnish equipment.
44-1-106. Authority of department of justice to dispose of equipment.

Part 2 — Highway Patrol Chief

44-1-201. Appointment and tenure.
44-1-202. Qualifications.
44-1-203. Salary and expenses.

Part 3 — Powers and Duties of Chief Relating to Patrolmen

44-1-301. General supervisory powers.
44-1-302. Powers relating to supervisory personnel.
44-1-303. Duties.

Part 4 — Appointment of Patrolmen

44-1-401. Qualifications of patrolmen.
44-1-402. Appointment of supervisory personnel.
44-1-403. Equal number of appointments from each highway district.
44-1-404. Status of replacements for patrolmen who enter the armed forces.

Part 5 — Salaries of Patrolmen

44-1-501. Payment of salaries.
44-1-502. Payment of compensation for time spent answering subpoena.
44-1-503. Salary upon permanent appointment.
44-1-504 through 44-1-510 reserved.
44-1-511. Payment of salary benefit to officers injured in performance of duty.

44-1-512. Determination of eligibility for salary benefit.
44-1-513. Periodic medical examinations — waiver of right to salary benefit.
44-1-514. Discontinuation of salary benefit when retirement allowance granted.
44-1-515. Assignment to light duty or another position within department of justice.
44-1-516. Effect on probationary status.
44-1-517. Subrogation.
44-1-518. Contribution for retirement — length of service credit — transfer of retirement contributions and length of service credit.

Part 6 — Probationary Status and Tenure

44-1-601. Probationary training and service — patrolmen.
44-1-602. Probationary training and service — supervisory personnel.
44-1-603 through 44-1-610 reserved.
44-1-611. Tenure.
44-1-612. Cause for suspension, demotion, or discharge.

Part 7 — Disciplinary Action—Preliminary Procedure

44-1-701. Authority of department of justice to suspend, demote, or reprimand.
44-1-702. Preferring charges.
44-1-703. When charges dismissed.
44-1-704. When department of justice to order hearing.
44-1-705. Suspension pending hearing and decision.

Part 8 — Disciplinary Action Hearing and Decision

44-1-801. Notice of hearing.
44-1-802. Authority of department of justice — conduct of hearing.
44-1-803. Rights of accused.
44-1-804. Rendering and filing of decision.
44-1-805. Reinstatement and backpay upon exoneration.
44-1-806. Disciplinary action.
44-1-807. Length of suspension.
44-1-808. Demotion pay status.

Part 9 — Disciplinary Action—Appeal to Court

44-1-901. Right to appeal.
44-1-902. Action by court.
44-1-903. Reinstatement and backpay upon reversal or modification.

Part 10 — Jurisdiction of Patrolmen

44-1-1001. Offenses for which patrolmen may make arrests.
44-1-1002. No authority in labor disputes.
44-1-1003. Offenses on highways, rest areas, and state highway properties adjacent to the highway or involving motor vehicles.
44-1-1004. Authority concerning livestock or livestock products in transit.
44-1-1005. Motor carriers safety — enforcement.

Part 11 — Procedure for Arrests

44-1-1101. Duty of patrolman upon making an arrest.
44-1-1102. Procedure when patrolman accepts bail.
44-1-1103. Check in lieu of cash.

Chapter Cross-References

Code of Ethics, Title 2, ch. 2, part 1.

Local government law enforcement, Title 7, ch. 32.

Definition of peace officer, 45-2-101.
Obstructing a peace officer, 45-7-302.
Highway safety, Title 61, ch. 2.
Qualification as driver examiners, 61-5-101.

Part 1

General Provisions

Part Cross-References

Department of Justice to administer law and make rules, 61-6-105.

44-1-101. Creation of highway patrol. There is hereby created a "Montana highway patrol" under the control and supervision of the department of justice.

History: En. Sec. 1, Ch. 199, L. 1943; R.C.M. 1947, 31-101; amd. Sec. 1, Ch. 503, L. 1985.

Compiler's Comments

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

44-1-102. General duties of department of justice. The department of justice shall provide for clerical help, for the maintenance of the patrol, and for the employment and supervision of the patrol in conformity with the provisions of this chapter.

History: En. Sec. 3, Ch. 199, L. 1943; amd. Sec. 1, Ch. 55, L. 1945; amd. Sec. 1, Ch. 245, L. 1971; R.C.M. 1947, 31-103(part); amd. Sec. 1, Ch. 503, L. 1985.

Compiler's Comments

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

Cross-References

Department of Justice to administer laws and make rules, 61-6-105.

44-1-103. Authority to make rules. The department of justice may make, promulgate, and amend rules which prescribe procedures and practice requirements of the Montana highway patrol.

History: En. Sec. 3, Ch. 199, L. 1943; amd. Sec. 1, Ch. 55, L. 1945; amd. Sec. 1, Ch. 245, L. 1971; R.C.M. 1947, 31-103(part); amd. Sec. 1, Ch. 503, L. 1985.

Compiler's Comments

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

Cross-References

Department of Justice to administer laws and make rules, 61-6-105.

44-1-104. Duty to furnish governor with transportation. The department of justice shall furnish the governor with automobile transportation upon his request, provided that such transportation shall be limited to travel and transportation of the governor while on official business of the state.

History: En. Sec. 3, Ch. 199, L. 1943; amd. Sec. 1, Ch. 55, L. 1945; amd. Sec. 1, Ch. 245, L. 1971; R.C.M. 1947, 31-103(part); amd. Sec. 1, Ch. 503, L. 1985.

Compiler's Comments

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

44-1-105. Department of justice to furnish equipment. The department of justice shall furnish patrolmen with automobiles equipped and fitted with a distinctive siren and a particularly designated light for use at night. The department shall furnish all patrolmen with uniforms and equipment necessary for the performance of their respective duties, with the approval of the captain of their respective districts. Any such equipment and uniforms shall remain the property of the state of Montana.

History: En. Sec. 6, Ch. 199, L. 1943; amd. Sec. 1, Ch. 31, L. 1955; R.C.M. 1947, 31-106(part); amd. Sec. 1, Ch. 503, L. 1985.

Compiler's Comments

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles in two places.

Cross-References

Applicability of motor pool provisions, 2-17-411.

44-1-106. Authority of department of justice to dispose of equipment. The department of justice shall have authority to destroy, sell, or dispose of any and all obsolete equipment or uniforms or parts thereof, and any moneys received therefrom shall be paid into the state general fund.

History: En. Sec. 6, Ch. 199, L. 1943; amd. Sec. 1, Ch. 31, L. 1955; R.C.M. 1947, 31-106(part); amd. Sec. 1, Ch. 503, L. 1985.

Compiler's Comments

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

Part 2

Highway Patrol Chief

Part Cross-References

Chief of patrol defined, 61-1-302.

44-1-201. Appointment and tenure. The attorney general shall select a highway patrol chief who shall have the rank of colonel and shall hold his office until his appointment has terminated for cause, as hereinafter set forth.

History: En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967; amd. Sec. 15, Ch. 439, L. 1975; amd. Sec. 3, Ch. 343, L. 1977; R.C.M. 1947, 31-104(part).

Cross-References

State Commissioner on Vehicle Equipment Safety Commission, 61-2-204.

44-1-202. Qualifications. The person named as chief shall have been a continuous resident of Montana for at least 5 years.

History: En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967; amd. Sec. 15, Ch. 439, L. 1975; amd. Sec. 3, Ch. 343, L. 1977; R.C.M. 1947, 31-104(part).

44-1-203. Salary and expenses. The chief shall receive a salary fixed by the attorney general within the limits of the legislative appropriation for such purpose and travel expenses, as provided for in 2-18-501 through 2-18-503.

History: En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967; amd. Sec. 15, Ch. 439, L. 1975; amd. Sec. 3, Ch. 343, L. 1977; R.C.M. 1947, 31-104(part).

Part 3

Powers and Duties of Chief Relating to Patrolmen

44-1-301. General supervisory powers. The chief shall have direct control and supervision of all patrolmen, subject to the approval of the attorney general.

History: **En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967; amd. Sec. 15, Ch. 439, L. 1975; amd. Sec. 3, Ch. 343, L. 1977; R.C.M. 1947, 31-104(part); amd. Sec. 1, Ch. 146, L. 1979.**

44-1-302. Powers relating to supervisory personnel. The duties and jurisdiction of the supervisory personnel shall be outlined and defined by and under the control of the chief.

History: **En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(part); amd. Sec. 2, Ch. 146, L. 1979.**

44-1-303. Duties. The chief, with the approval of the attorney general and within the limits of any appropriation made available for such purposes, shall:

(1) designate the authority and responsibility in each rank, grade, and position;

(2) formulate standards, policies, and qualifications in the selection of recruit patrolmen;

(3) prescribe the official uniform of the Montana highway patrol;

(4) station employees in such localities as he shall deem advisable for the enforcement of the traffic laws of this state;

(5) charge against each employee the value of property of the state lost or destroyed through the carelessness or neglect of such employee;

(6) discharge, demote, or temporarily suspend after hearing, as provided in parts 7 and 8 of this chapter, any patrolman of the department;

(7) have purchased or otherwise acquired by the purchasing department of the state motor equipment and all other equipment and commodities deemed by him essential to the efficient operation of the Montana highway patrol.

History: **En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967; amd. Sec. 15, Ch. 439, L. 1975; amd. Sec. 3, Ch. 343, L. 1977; R.C.M. 1947, 31-104(part); amd. Sec. 3, Ch. 146, L. 1979.**

Cross-References

Authority of Department of Justice to suspend, demote, or reprimand, 44-1-701.

Chief as Commissioner on Vehicle Equipment Safety Commission, 61-2-204.

Part 4

Appointment of Patrolmen

44-1-401. Qualifications of patrolmen. Patrolmen shall possess the following qualifications:

(1) sound and active physical and mental condition;

(2) good moral character;

(3) residency in Montana for at least 1 year immediately prior to appointment;

(4) having passed a satisfactory test in the operation of automobiles;

(5) citizenship in the United States and state of Montana.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(3).

Cross-References

Definition of highway patrolman, 61-1-305.

44-1-402. Appointment of supervisory personnel. Supervisory personnel shall be selected from the patrolmen by the chief. The chief shall designate supervisory personnel, including but not limited to captains, lieutenants, sergeants, and patrolmen, in such numbers as necessary but within the limits of the legislative appropriation made available for such purposes.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(part); amd. Sec. 4, Ch. 146, L. 1979.

44-1-403. Equal number of appointments from each highway district. Replacements and additions to the highway patrol force shall be chosen in equal numbers from the 12 highway districts. However, if sufficient qualified applications are not received from any one district, the department of justice may, in its discretion, substitute other qualified applicants from any other districts.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(1)(b); amd. Sec. 1, Ch. 503, L. 1985.

Compiler's Comments

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

Cross-References

Highway districts, 60-3-203.

44-1-404. Status of replacements for patrolmen who enter the armed forces. Patrolmen filling vacancies caused by the incumbents' entrance into the armed forces of the United States shall, on the return of the incumbents, be placed in the patrol reserve without pay, except that they shall hold their probationary or permanent appointments while there are sufficient operating funds. Reserve patrolmen shall be used for future replacements in the permanent patrol.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(1)(c); amd. Sec. 1, Ch. 7, L. 1979.

Cross-References

Leave of absence of public employee attending training camp, 10-1-604.

Reemployment of public employee upon completion of service, 10-2-221.

Part 5

Salaries of Patrolmen

Part Cross-References

Highway Patrolmen's Retirement System, Title 19, ch. 6.

44-1-501. Payment of salaries. All salaries of members of the highway patrol shall be paid out of the highway department's account in the state special revenue fund.

History: En. Sec. 1, Ch. 285, L. 1971; R.C.M. 1947, 31-105.1; amd. Sec. 2, Ch. 7, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

44-1-502. Payment of compensation for time spent answering subpoena. A highway patrolman shall receive all regular duty pay and benefits for time spent answering a subpoena in a civil or criminal cause when he has been called to testify in connection with his official patrol duties. The department of justice may bill the person or organization requesting the issuance of the subpoena for reimbursement for the patrolman's time.

History: En. 31-105.2 by Sec. 1, Ch. 221, L. 1977; R.C.M. 1947, 31-105.2.

Cross-References

Subpoenas and witnesses, Title 46, ch. 15, part 1.

44-1-503. Salary upon permanent appointment. In the event that a probationary patrolman is appointed permanently, he shall, at the time of such appointment, receive the base salary of a patrolman.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(2).

Cross-References

Probationary status and tenure, Title 44, ch. 1, part 6.

44-1-504 through 44-1-510 reserved.

44-1-511. Payment of salary benefit to officers injured in performance of duty. (1) A member of the highway patrol who, in the performance of his duties, suffers an injury which necessitates medical or other remedial treatment and which renders him unable to perform his duties shall be paid the full amount of his regular salary as a salary benefit until one of the following occurs:

(a) He ceases to be disabled.

(b) A period of 1 year elapses after the date of the injury.

(c) Although disabled, he is ordered returned to light duty by the chief of the highway patrol.

(d) Although disabled, he accepts a transfer position within the department of justice.

(e) He waives his benefit.

(2) The department of justice shall set off the amount of any workers' compensation award actually received against the salary benefit payable under this section.

History: **En Sec. 1, Ch. 317, L. 1979.**

Cross-References

Workers' compensation, Title 39, ch. 71.

Reimbursement for costs of law enforcement assistance, 44-11-202.

Crime victims reparations, Title 53, ch. 9, part 1.

44-1-512. Determination of eligibility for salary benefit. (1) The highway patrol chief shall determine whether an injury incurred by an officer was incurred in the performance of his duties and whether an injury so incurred resulted in a disability.

(2) In determining the nature and extent of an officer's injuries and the extent of any recovery, the chief shall seek and consider the medical opinion of a qualified physician who has examined the injured officer. The chief may seek a second medical opinion in his discretion.

History: **En Sec. 2, Ch. 317, L. 1979.**

44-1-513. Periodic medical examinations — waiver of right to salary benefit. (1) The chief may appoint a physician to examine the officer from time to time. If, in the physician's opinion, the injured officer has sufficiently recovered to perform light duties or his regular duties, the physician shall certify that fact.

(2) An injured officer who unreasonably refuses to accept medical treatment or hospital care or to permit a medical examination under subsection (1) or 44-1-512(2) waives any salary benefit to which he might otherwise be entitled under 44-1-511.

History: **En Sec. 3, Ch. 317, L. 1979.**

44-1-514. Discontinuation of salary benefit when retirement allowance granted. Payment of a salary benefit under 44-1-511 shall be discontinued if the injured officer is disabled for an indefinite period and is granted a disability retirement allowance under Title 19, chapter 6. If an officer is indefinitely disabled and does not apply for a disability retirement allowance, application therefor may be made by the chief.

History: **En Sec. 4, Ch. 317, L. 1979.**

44-1-515. Assignment to light duty or another position within department of justice. (1) The chief, taking into consideration the medical opinions he has received, may determine at any time that an injured officer is able to perform light police duty consistent with his status as a law enforcement officer and may order the officer assigned to such light duty. If the officer refuses to perform the light duty, payment of the salary benefit under 44-1-511 shall be discontinued.

(2) The chief may order an injured officer transferred from the highway patrol to another position within the department of justice. An officer may decline to accept a transfer under this subsection with no loss of salary benefit.

History: **En Sec. 5, Ch. 317, L. 1979.**

44-1-516. Effect on probationary status. If the injured officer is on probationary status at the time he becomes injured, the balance of his probationary time shall be suspended until he returns to regular duty or is discharged for cause.

History: En Sec. 6, Ch. 317, L. 1979.

Cross-References

Probationary status and tenure, Title 44, ch. 1, part 6.

44-1-517. Subrogation. The state has a cause of action for reimbursement of sums it has paid to an officer as a salary benefit and for medical treatment and examinations against any third party against whom the officer has a cause of action for the injury which necessitated the payments by the state.

History: En Sec. 7, Ch. 317, L. 1979.

44-1-518. Contribution for retirement — length of service credit — transfer of retirement contributions and length of service credit. (1) When an officer receives compensation under 44-1-511, the officer's contribution for retirement under 19-6-402 must be paid on the compensation received under 44-1-511 and the state's contribution for retirement under 19-6-404 must be paid on the compensation received under 44-1-511.

(2) The time for which contributions are paid under 44-1-511 shall be credited to the length of service computed for retirement purposes under 19-6-302.

(3) When a disabled officer who qualifies for benefits under 44-1-511 accepts a transfer under 44-1-515 to a nonhighway patrol position within the department of justice that is covered under the Public Employees' Retirement System Act, all of the officer's length of service credited with the Montana patrolmen's retirement system shall be transferred to the public employees' retirement system in the officer's credit and the officer's accumulated contributions and the state's adjusted contributions, with accrued interest, credited to the officer in the Montana highway patrolmen's retirement account shall be transferred to the public employees' retirement account in the officer's credit. The state's "adjusted contributions" means an amount equal to the amount that would have been contributed by the state had the transferred service been employment covered under the public employees' retirement system.

History: En Sec. 8, Ch. 317, L. 1979.

Cross-References

Public Employees' Retirement System, Title 19, ch. 3.

Part 6

Probationary Status and Tenure

Part Cross-References

Duties of Chief of Highway Patrol Bureau, 44-1-303.

44-1-601. Probationary training and service — patrolmen. A new patrolman shall be placed under probationary training and service for a period of 6 months to 1 year. If the chief fails to recommend a permanent appointment by the end of the probationary period, the probationary patrolman will automatically be discharged.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(4)(a); amd. Sec. 3, Ch. 7, L. 1979; amd. Sec. 5, Ch. 146, L. 1979.

44-1-602. Probationary training and service — supervisory personnel. All newly appointed supervisory personnel shall be placed under probationary training and service for a period of 6 months to 1 year. If the chief fails to recommend a permanent appointment by the end of the probationary period, the probationary supervisory personnel will automatically revert to their previous ranks without prejudice.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(4)(b); amd. Sec. 4, Ch. 7, L. 1979; amd. Sec. 6, Ch. 146, L. 1979.

44-1-603 through 44-1-610 reserved.

44-1-611. Tenure. Every person employed or appointed and designated as a chief, captain, lieutenant, sergeant, patrolman, or any other rank under and pursuant to the provisions of this chapter, except as provided in 44-1-601 and 44-1-602, shall continue in service and hold his position without demotion until suspended, demoted, or discharged in the manner hereinafter provided for one or more of the causes specified in 44-1-612.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(5).

Cross-References

Duties of Department of Justice, 44-1-102.

44-1-612. Cause for suspension, demotion, or discharge. Cause for suspension, demotion, or discharge is:

(1) conviction of any crime involving moral turpitude in any court of competent jurisdiction subsequent to the commencement of such employment;

(2) gross neglect of duty or willful violation or disobedience of orders or regulations;

(3) loitering about or entering places of ill fame or ill repute or in which illegal gambling is known to be conducted or to be in progress, except in the immediate discharge of duty;

(4) conduct unbecoming an officer;

(5) drinking intoxicating liquor while using state-owned cars or in uniform or being intoxicated in a public place;

(6) sleeping while on duty;

(7) incapacity or partial incapacity materially affecting ability to perform official duties;

(8) gross inefficiency in performing duties; or

(9) willful disobedience of rules adopted by the department of justice governing the conduct and discipline of members of the patrol.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(6); amd. Sec. 5, Ch. 7, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Compiler's Comments

1985 Amendment: In (9) substituted reference to department of justice for reference to division of motor vehicles.

Cross-References

Code of Ethics, Title 2, ch. 2, part 1.

Part 7

Disciplinary Action — Preliminary Procedure

Part Cross-References

Code of ethics, Title 2, ch. 2, part 1.

Duties of Department of Justice, 44-1-102.

Cause for suspension, demotion, or discharge, 44-1-612.

44-1-701. Authority of department of justice to suspend, demote, or reprimand. When the department of justice has cause to believe that any member of the highway patrol has violated any of the grounds for suspension, demotion, or discharge or his conduct has warranted reprimanding, it may suspend, demote, or reprimand the member.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(8)(a); amd. Sec. 1, Ch. 503, L. 1985.

Compiler's Comments

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

Cross-References

Duties of Chief of Highway Patrol generally, 44-1-303.

44-1-702. Preferring charges. (1) The charge or charges against any member of the highway patrol shall be made in writing and signed and sworn to by the person making the charge or charges.

(2) The written charge or charges shall be filed with the department of justice.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(7)(a) thru (c); amd. Sec. 1, Ch. 503, L. 1985.

Compiler's Comments

1985 Amendment: In (2) substituted reference to department of justice for reference to division of motor vehicles.

44-1-703. When charges dismissed. When charges are filed and the department of justice believes such charge or charges do not constitute grounds for suspension, demotion, or discharge, it shall dismiss such charges.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109,

L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(7)(e); amd. Sec. 1, Ch. 503, L. 1985.

Compiler's Comments
1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

44-1-704. When department of justice to order hearing. When charges are filed and the department of justice believes that such charge or charges constitute grounds for suspension, demotion, or discharge, it shall order a hearing to be had thereon before it and fix a time for such hearing.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(7)(d); amd. Sec. 1, Ch. 503, L. 1985.

Compiler's Comments
1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

44-1-705. Suspension pending hearing and decision. If the department of justice orders a hearing, the chief may suspend such patrolman pending the rendition of the decision made in such case.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(8)(b); amd. Sec. 7, Ch. 146, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Compiler's Comments
1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

Part 8

Disciplinary Action Hearing and Decision

Part Cross-References
Duties of Department of Justice, 44-1-102.
Cause for suspension, demotion, or discharge, 44-1-612.

44-1-801. Notice of hearing. (1) The department of justice shall, at least 10 days before the time appointed for a hearing, serve written notice on the accused patrolman, specifying the charge or charges filed and stating the name of the person or persons making the charge or charges.

(2) If the accused patrolman is located within the state and his whereabouts is known, the service required by subsection (1) shall be made personally. If the accused patrolman is located outside the state and his whereabouts is known, service may be made by mailing the written notice to his place of residence. If, at the time, the whereabouts of the accused patrolman is unknown, service may be made upon him by mailing the written notice to him at his last-known place of residence in Montana.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109,

L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(10); amd. Sec. 6, Ch. 7, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Compiler's Comments
1985 Amendment: In (1) substituted reference to department of justice for reference to division of motor vehicles.

44-1-802. Authority of department of justice — conduct of hearing. (1) The department of justice shall be the authority to hear such charge or charges and render a decision and appropriate order.

(2) The department shall have the power to compel the attendance of witnesses at any such hearing and to examine them under oath and to require the production of books, papers, and other evidence at such hearing and, for those purposes, to issue subpoenas and cause the same to be served and executed in any part of the state.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(11)(a), (11)(b); amd. Sec. 1, Ch. 503, L. 1985.

Compiler's Comments
1985 Amendment: In (1) and (2) substituted reference to department of justice for reference to division of motor vehicles.

44-1-803. Rights of accused. The accused patrolman shall be entitled to be confronted with the witnesses against him and have an opportunity to cross-examine the same and to introduce at such hearing testimony in his own behalf. He shall be entitled to be represented by counsel at such hearing.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(11)(c).

44-1-804. Rendering and filing of decision. The department of justice shall, within 15 days after such hearing, render its decision in writing and file same in its office, with the chief, and with the patrolman accused.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(11)(d); amd. Sec. 1, Ch. 503, L. 1985.

Compiler's Comments
1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

44-1-805. Reinstatement and backpay upon exoneration. If after the hearing the department of justice finds that the charge or charges made against the patrolman are not true, the department shall reinstate the accused patrolman to his position and rank and shall order the payment of any salary withheld pending the determination of the charge or charges.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L.

1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(12)(b); amd. Sec. 7, Ch. 7, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Compiler's Comments
1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles in two places.

Cross-References
Reinstatement and backpay upon reversal or modification, 44-1-903.

44-1-806. Disciplinary action. If after a hearing the department of justice finds that any charge or charges made against the patrolman are true, it may punish the offending party by reprimand, suspension without pay, demotion, or discharge.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(12)(a); amd. Sec. 8, Ch. 7, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Compiler's Comments
1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

44-1-807. Length of suspension. A member under suspension shall be on leave without pay for a period not to exceed 30 days.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(9)(a); amd. Sec. 9, Ch. 7, L. 1979.

44-1-808. Demotion pay status. In cases of disciplinary action resulting in demotion, the member shall receive the pay of the rank to which he is demoted.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(9)(b).

Cross-References
Reinstatement and backpay upon reversal or modification, 44-1-903.

Part 9

Disciplinary Action — Appeal to Court

44-1-901. Right to appeal. (1) Any patrolman who is suspended, demoted, or discharged has a right of appeal to the district court of Lewis and Clark County.

(2) The appeal must be made within 10 days after the decision or determination of the department of justice.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(13)(a), (13)(b); amd. Sec. 10, Ch. 7, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Compiler's Comments
1985 Amendment: In (2) substituted reference to department of justice for reference to division of motor vehicles.

Cross-References
Judicial review of contested cases, Title 2, ch. 4, part 7.

44-1-902. Action by court. The district court shall review such decision or determination in a summary manner and render its decision upon such appeal within 90 days from the filing of such appeal in said court.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(13)(c).

44-1-903. Reinstatement and backpay upon reversal or modification. If the decision or determination of the department of justice is finally reversed or modified by the district court, the accused patrolman must be reinstated in his position. Upon reinstatement, the department shall pay to the patrolman any salary or wages withheld from him pending the determination of the charge or charges or take such action as may be directed by the court.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(13)(d); amd. Sec. 11, Ch. 7, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Compiler's Comments

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles in two places.

Cross-References

Reinstatement and backpay upon exoneration, 44-1-805.

Part 10

Jurisdiction of Patrolmen

Part Cross-References

Enforcement of provisions respecting use of snowmobiles, 23-2-641.

Enforcement of motor vehicle statutes, 61-3-602.

Motor vehicle accidents and accident reports, Title 61, ch. 7.

Traffic regulation, Title 61, ch. 8.

Obedience to highway patrolman, 61-9-105.

Records kept by Department of Justice, 61-11-102.

Issuing summons to minor, 61-12-602.

Patrolman acting as firewarden, 77-5-104.

44-1-1001. Offenses for which patrolmen may make arrests. (1) The highway patrol chief and all patrolmen may make arrests for the offenses listed in subsection (2) under the following circumstances:

(a) the offense is committed in the presence of the chief or any patrolman;

(b) the offense is committed in a rural district and a request for assistance is made by a peace officer; or

(c) the offense is committed in a city or town with a population of less than 2,500 and a request for assistance is made by a peace officer or the mayor of the city or town.

(2) Offenses for which arrests may be made under subsection (1) are:

(a) deliberate homicide;

(b) assault with a deadly weapon;

(c) arson;

(d) criminal mischief;

(e) burglary;

(f) theft;

(g) kidnapping;

(h) illegal transportation of narcotics; or

(i) violation of the Dyer Act regarding the transportation of stolen automobiles.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965; amd. Sec. 2, Ch. 280, L. 1977; amd. Sec. 46, Ch. 359, L. 1977; R.C.M. 1947, 31-110(part); amd. Sec. 12, Ch. 7, L. 1979.

Cross-References

Deliberate homicide, 45-5-102.
Assault, 45-5-201.
Aggravated assault, 45-5-202.
Kidnapping, 45-5-302.
Aggravated kidnapping, 45-5-303.
Criminal mischief, 45-6-101.
Negligent arson, 45-6-102.
Arson, 45-6-103.
Burglary, 45-6-204.
Theft, 45-6-301.
Criminal sale of dangerous drugs, 45-9-101.
Written reports of highway accidents, 61-7-109.

44-1-1002. No authority in labor disputes. Such highway patrolmen have no authority and are expressly forbidden to make arrests in labor disputes or to prevent violence in connection with strikes and may not perform any duties whatsoever in connection with labor disputes, strikes, or boycotts.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965; amd. Sec. 2, Ch. 280, L. 1977; amd. Sec. 46, Ch. 359, L. 1977; R.C.M. 1947, 31-110(part).

44-1-1003. Offenses on highways, rest areas, and state highway properties adjacent to the highway or involving motor vehicles. Patrolmen are considered police officers for the purpose of making arrests for all offenses occurring on the highways, highway rest areas, state highway properties adjacent to the highway, or involving the use of motor vehicles or the registration thereof and for the purpose of serving warrants of arrest in connection with such violations.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965; amd. Sec. 2, Ch. 280, L. 1977; amd. Sec. 46, Ch. 359, L. 1977; R.C.M. 1947, 31-110(2); amd. Sec. 1, Ch. 645, L. 1979.

Cross-References

Regulations governing arrest authorized, 7-32-4301.
Warrants generally, Title 46, ch. 6, part 2.
Arrest without warrant generally, Title 46, ch. 30, part 3.
Highways defined, 61-1-201, 61-1-202.
Authority of Department of Justice to cancel licenses, 61-5-201.
Reports of accidents on highways, 61-7-109.
Motor vehicle defined, 69-12-101.

44-1-1004. Authority concerning livestock or livestock products in transit. Patrolmen may stop any truck or motor vehicle in which livestock or livestock products are being transported and ascertain whether the driver of such truck or vehicle is rightfully in possession of such livestock or livestock products. If the patrolmen have good reason to believe that livestock or livestock products have been stolen, they may take possession of the same until the livestock or livestock products can be delivered into the custody of the sheriff or until such time as the facts as to the actual ownership can be ascertained.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965; amd. Sec. 2, Ch. 280, L. 1977; amd. Sec. 46, Ch. 359, L. 1977; R.C.M. 1947, 31-110(3).

Cross-References

Theft, 45-6-301.
Duties of stock inspectors and detectives concerning livestock or livestock products in transit, 81-1-202.

44-1-1005. Motor carriers safety — enforcement. (1) The department of justice shall:

(a) adopt, by rule, standards for safety of operations of motor carriers, each of whom is considered to consent impliedly to reasonable safety inspections of its motor vehicles utilized in furtherance of its business as a motor carrier;

(b) provide standards for the safe operation of all motor vehicles used in commerce that exceed 26,000 pounds gross vehicle weight, except farm vehicles; and

(c) provide for the safe operation of vehicles of less than 26,000 pounds gross vehicle weight if they are used to transport passengers for hire or to transport hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with rules adopted by the department.

(2) Standards of safety adopted pursuant to subsections (1)(b) and (1)(c) must be the same as prescribed for motor carriers, and the same inspection standards and procedures apply. However, standards relating to drivers, other than drivers for motor carriers, do not apply to a vehicle operated exclusively within a 200-mile radius of its work reporting location.

(3) The highway patrol has responsibility for enforcement of standards adopted pursuant to subsection (1)(a). Inspection of a vehicle based in Montana may, at the request of the carrier, be made at the place of business or domicile of the vehicle owner or, if that is not a practicable inspection site, at a designated location and at a mutually agreeable time. After inspection, a vehicle found to conform to the standards adopted pursuant to subsection (1)(a) is entitled to certification and identification to exempt it from further safety inspection until the next required periodic inspection or until a nonconformity with standards is apparent. Nothing in this section prohibits the inspection of a motor vehicle as defined by subsection (1)(a) at a safe location on a public road.

(4) The department shall cooperate with the department of highways to assure minimum duplication and maximum coordination of enforcement effort.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965; amd. Sec. 2, Ch. 280, L. 1977; amd. Sec. 46, Ch. 359, L. 1977; R.C.M. 1947, 31-110(4); amd. Sec. 13, Ch. 7, L. 1979; amd. Sec. 1, Ch. 226, L. 1981; amd. Sec. 1, Ch. 394, L. 1983; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 4, Ch. 686, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 503 in introductory clause of (1), (1)(c), and (4) substituted reference to department of justice for reference to division of motor vehicles.

Chapter 686 substituted present subsections for former section that read: "A highway patrolman has the same authority to enforce provisions of the motor carriers law as that granted the public service commission under 69-12-203, except that the highway patrol has primary responsibility for enforcement of standards adopted pursuant to 69-12-201(1)(f) with regard to vehicles based in Montana and for making inspections thereof at the request of the carrier. Inspection of a vehicle based in Montana may be made at the place of business or domicile of the vehicle owner or, if that is not a practicable inspection site, at a designated location and at a mutually agreeable time. After inspection, a vehicle found to conform to the standards adopted pursuant to 69-12-201(1)(f) is entitled to certification and identification to exempt it from further safety inspection until the next required periodic inspection or until a nonconformity with standards is apparent. Nothing in this section shall prohibit the inspection of a motor vehicle as defined by 69-12-201(1)(f) at a safe location on a public road. The division shall cooperate with the public service commission and the department of highways to assure minimum duplication and maximum coordination of enforcement effort".

1983 Amendment: Substituted new language for former section, which read: "A highway patrolman has the same authority to enforce provisions of the motor carriers law as that granted the public service commission under

69-12-203. The division shall cooperate with the public service commission and the department of highways to assure minimum duplication and maximum coordination of enforcement effort."

1981 Amendment: Deleted "licensing" after "motor carriers".

Cross-References

Vehicle equipment, Title 61, ch. 9.

Applicability of Title 61, chapter 9, 61-9-109.

Performance ability of brakes, 61-9-312.

Inspections by officers of Department of Justice, 61-9-501.

Owners and drivers to comply with inspection laws, 61-9-503.

Joint enforcement of motor carrier safety standards by Highway Patrol, Department of Highways, 61-10-141.

Officers authorized to weigh vehicles and require removal of excessive loads, 61-10-141.

Display of permit, 61-10-142.

Confiscation — action by Commission, 61-10-143.

Motor carriers, Title 69, ch. 12.

Part 11

Procedure for Arrests

Part Cross-References

Arrest, Title 46, ch. 6.

Circumstances in which a peace officer may arrest, 46-6-401.

Bail, Title 46, ch. 9.

Obedience to highway patrolman, 61-9-105.

44-1-1101. Duty of patrolman upon making an arrest. Upon making an arrest, a patrolman shall:

(1) deliver the offender to the nearest justice of the peace during office hours or to the county jail;

(2) give the offender a summons describing the nature of the offense with instructions thereon for the offender to report to the nearest justice of the peace; or

(3) accept bail determined pursuant to Title 46, chapter 9, part 3.

History: En. Sec. 12, Ch. 199, L. 1943; R.C.M. 1947, 31-112(part); amd. Sec. 14, Ch. 7, L. 1979.

Cross-References

Regulations governing arrest authorized, 7-32-4301.

44-1-1102. Procedure when patrolman accepts bail. If the patrolman accepts bail, he shall give a signed receipt to the offender, setting forth the amount received. The patrolman shall then deliver the bail money to the justice of the peace before whom the offender is to appear, and the justice of the peace shall give a receipt to the patrolman for the amount of bail money delivered. After the filing of the complaint and the appearance of the defendant, the justice of the peace shall assume jurisdiction and may set and accept further bail bond.

History: En. Sec. 12, Ch. 199, L. 1943; R.C.M. 1947, 31-112(part); amd. Sec. 15, Ch. 7, L. 1979.

Cross-References

Bail schedule for minor offenses — acceptance by peace officer, 46-9-302.

Acceptance of bail by peace officer, 46-9-302, 46-9-303.

44-1-1103. Check in lieu of cash. (1) In the case of traffic violations, bond may be made by personal check in lieu of cash. Highway patrolmen or other authorized agents receiving bonds on behalf of the court may accept a personal check in lieu of cash provided that:

(a) the check is drawn on a bank domiciled in the state of Montana; and

(b) the person who writes the check in lieu of cash bond has two documents identifying him.

(2) If a check is offered in lieu of cash, the highway patrolman or other authorized agent who accepts the check is not liable in the case of nonpayment.

(3) A person who writes a check in lieu of cash bond which is returned for insufficient funds is subject to prosecution under 45-6-316, and obtaining bond constitutes securing services for the purposes of that section.

History: En. 31-112.1 by Sec. 1, Ch. 295, L. 1977; R.C.M. 1947, 31-112.1.

Cross-References

Issuing bad checks, 45-6-316.

Furnishing bail, Title 46, ch. 9, part 4.

CHAPTER 2

INVESTIGATION, COMMUNICATION, AND IDENTIFICATION

Part 1 — Criminal Investigation

Section
44-2-101. Repealed.
44-2-102. Repealed.
44-2-103. Repealed.
44-2-104 through 44-2-110 reserved.
44-2-111. Definition of "agent".
44-2-112. Appointment of agents and assisting personnel.
44-2-113. Qualifications of agents.
44-2-114. Personnel covered by PERS.
44-2-115. Powers and duties of agents.
44-2-116. Cooperation of state agencies.

Part 2 — State System of Criminal Identification

44-2-201. Establishment of state system.
44-2-202. Assistance to and instruction of local officers.
44-2-203. Repealed.
44-2-204. Repealed.
44-2-205. Withholding of salary of officer who fails to provide information.
44-2-206. Cooperation with FBI and other states.

Part 3 — Teletypewriter Communications System

44-2-301. Establishment — inclusion of other state agencies.
44-2-302. Powers of attorney general.
44-2-303. Federal cost sharing.
44-2-304. Report by attorney general.
44-2-305 through 44-2-310 reserved.
44-2-311. Participation by local and other agencies.
44-2-312. Authorization of monthly operational charge.
44-2-313. Payment of charge.
44-2-314. Use of moneys — records.
44-2-315. Removal from network upon nonpayment.
44-2-316. Assessment for personnel.

Part 4 — Dental Records
Missing Persons and Unidentified Bodies

44-2-401. Missing persons — dental records.
44-2-402. Dental examination — records — report.

Part 5 — Missing Children

44-2-501. Short title.
44-2-502. Definitions.
44-2-503. Missing children information program.
44-2-504. Reports to missing children information program.
44-2-505. Duties of law enforcement authority.
44-2-506. List of missing Montana school children.
44-2-507. Notice to parents of children absent from school.

Chapter Cross-References

Private investigators and patrolmen, Title 37, ch. 60.

Part 1

Criminal Investigation

Part Cross-References

Investigative procedures, Title 46, ch. 4.

44-2-101. Repealed. Sec. 14, Ch. 503, L. 1985.

History: En. Sec. 1, Ch. 176, L. 1967; amd. Sec. 1, Ch. 219, L. 1971; R.C.M. 1947, 82-414(1).

44-2-102. Repealed. Sec. 14, Ch. 503, L. 1985.

History: En. Sec. 7, Ch. 176, L. 1967; amd. Sec. 7, Ch. 219, L. 1971; R.C.M. 1947, 82-420.

44-2-103. Repealed. Sec. 27, Ch. 525, L. 1979.

History: En. Sec. 4, Ch. 176, L. 1967; amd. Sec. 4, Ch. 219, L. 1971; R.C.M. 1947, 82-417.

44-2-104 through 44-2-110 reserved.

44-2-111. Definition of "agent". As used in this part, "agent" means a person appointed to conduct criminal investigations and perform related duties within the attorney general's office.

History: En. Sec. 2, Ch. 176, L. 1967; amd. Sec. 2, Ch. 219, L. 1971; R.C.M. 1947, 82-415; amd. Sec. 5, Ch. 503, L. 1985.

Compiler's Comments

1985 Amendment: Substituted "person appointed to conduct criminal investigations and perform related duties" for "person appointed to the bureau of criminal investigation".

Cross-References

Definition of agent, 28-10-101.

44-2-112. Appointment of agents and assisting personnel. The attorney general shall appoint agents and other necessary assisting personnel and fix their compensation.

History: En. Sec. 1, Ch. 176, L. 1967; amd. Sec. 1, Ch. 219, L. 1971; R.C.M. 1947, 82-414(2).

44-2-113. Qualifications of agents. Each agent shall be a person qualified by experience, training, and high professional competence in criminal investigation. Qualifications shall be equal to those of similarly assigned federal bureau of investigation personnel.

History: **En. Sec. 1, Ch. 176, L. 1967; amd. Sec. 1, Ch. 219, L. 1971; R.C.M. 1947, 82-414(3).**

44-2-114. Personnel covered by PERS. All agents and assisting personnel shall be covered by the public employees' retirement system.

History: **En. Sec. 5, Ch. 176, L. 1967; amd. Sec. 5, Ch. 219, L. 1971; R.C.M. 1947, 82-418.**

Cross-References

Public Employees' Retirement System, Title 19, ch. 3.

44-2-115. Powers and duties of agents. An agent shall:

(1) assist city, county, state, and federal law enforcement agencies at their request by providing expert and immediate aid in investigation and solution of felonies committed in the state;

(2) assist any law enforcement school held in the state for law enforcement officers when requested;

(3) act as a peace officer, as defined in the laws of Montana, when engaged in assisting or acting under the direction of city, county, state, and federal law enforcement agencies as provided in this section.

History: **En. Sec. 3, Ch. 176, L. 1967; amd. Sec. 3, Ch. 219, L. 1971; R.C.M. 1947, 82-416; amd. Sec. 16, Ch. 7, L. 1979.**

Cross-References

Peace officer defined, 1-1-207, 45-2-101.

44-2-116. Cooperation of state agencies. All state departments and agencies shall cooperate with such agents and assisting personnel in providing transportation and educational and laboratory facilities for their use when so requested.

History: **En. Sec. 6, Ch. 176, L. 1967; amd. Sec. 6, Ch. 219, L. 1971; R.C.M. 1947, 82-419.**

Part 2

State System of Criminal Identification

44-2-201. Establishment of state system. The department of justice shall cooperate with and assist sheriffs, chiefs of police, and other law enforcement officers in the establishment of a complete state system of criminal identification.

History: **En. Sec. 33, Ch. 199, L. 1965; R.C.M. 1947, 80-2002(part); amd. Sec. 17, Ch. 7, L. 1979.**

44-2-202. Assistance to and instruction of local officers. The department shall assist and, when practicable, instruct sheriffs, chiefs of police, and other law enforcement officers in establishing efficient local bureaus of identification in their districts and in making them proficient in procuring and maintaining fingerprint records.

History: **En. Sec. 37, Ch. 199, L. 1965; R.C.M. 1947, 80-2006; amd. Sec. 18, Ch. 7, L. 1979.**

44-2-203. Repealed. Sec. 27, Ch. 525, L. 1979.

History: **En. Sec. 33, Ch. 199, L. 1965; R.C.M. 1947, 80-2002(part).**

44-2-204. Repealed. Sec. 27, Ch. 525, L. 1979.
History: En. Sec. 34, Ch. 199, L. 1965; R.C.M. 1947, 80-2003.

44-2-205. Withholding of salary of officer who fails to provide information. The department shall report to the attorney general the failure of any officer to provide information as required by law. After an investigation of the report, the attorney general may order the proper disbursing officer to withhold payment of the salary of the officer who failed to provide the information until the information is given to the department.
History: En. Sec. 35, Ch. 199, L. 1965; R.C.M. 1947, 80-2004.

44-2-206. Cooperation with FBI and other states. The department shall cooperate with identification bureaus in other states and with the federal bureau of investigation to develop and carry on a complete interstate and international system of criminal identification and investigation.
History: En. Sec. 36, Ch. 199, L. 1965; R.C.M. 1947, 80-2005.

Part 3

Teletypewriter Communications System

Part Cross-References
Criminal justice information, Title 44, ch. 5.

44-2-301. Establishment — inclusion of other state agencies. The attorney general is hereby authorized to establish a permanent law enforcement teletypewriter communications system for the purpose of connecting federal, state, county, and city law enforcement agencies by teletype. He is further authorized to bring into the network, should he and they so desire, any department of Montana state government or its subdivisions outside of law enforcement activities when, in the opinion of the attorney general and the state department or subdivision, such inclusion will materially aid the law enforcement agencies of the state of Montana or its subdivisions in the fight against crime.
History: En. Sec. 1, Ch. 1, Ex. L. 1967; amd. Sec. 1, Ch. 145, L. 1969; R.C.M. 1947, 82-3901.

44-2-302. Powers of attorney general. To carry out the provisions of this part, the attorney general is authorized to:

(1) purchase, lease, or otherwise acquire facilities and equipment necessary to accomplish the purposes of this part;

(2) employ such personnel as may be necessary to operate such facilities within the framework of any funds budgeted or prorated on a charge basis against participating agencies as herein identified.
History: En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(a), (b).

Cross-References
Duties of Attorney General, 2-15-501.

44-2-303. Federal cost sharing. The attorney general shall contact federal law enforcement agencies or officials relative to federal cost sharing in the teletypewriter communications system, and if such funds are available from federal sources, the attorney general may sign agreements with the federal agencies. Any federal funds received in any biennium for which Montana funds have been appropriated shall be deposited in the system's account and shall be used, if at all possible, to reduce the spending of money appropriated from the general fund.

History: En. Sec. 5, Ch. 1, Ex. L. 1967; amd. Sec. 5, Ch. 145, L. 1969; R.C.M. 1947, 82-3905; amd. Sec. 19, Ch. 7, L. 1979.

44-2-304. Report by attorney general. The attorney general shall prepare a report in detail covering the operations of the communications network, the accounting of all moneys received and expended, and the need to expand or improve the system. He shall submit such report to the appropriations committee of every legislature at the time funds are requested for the administration of this part.

History: En. Sec. 6, Ch. 1, Ex. L. 1967; amd. Sec. 6, Ch. 145, L. 1969; R.C.M. 1947, 82-3906.

44-2-305 through 44-2-310 reserved.

44-2-311. Participation by local and other agencies. Any county, city, or other law enforcement agency may, with the approval of the attorney general, connect to the system and participate in it upon payment of or agreement to pay those costs established by the department of justice.

History: En. Sec. 4, Ch. 1, Ex. L. 1967; amd. Sec. 4, Ch. 145, L. 1969; R.C.M. 1947, 82-3904.

44-2-312. Authorization of monthly operational charge. The attorney general is hereby authorized to establish a monthly operational charge for the teletypewriter communications network, exclusive of personnel services, and such charge shall be prorated among all the various agencies using the system.

History: En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(part).

44-2-313. Payment of charge. Such charge shall be billed monthly to the agencies. Payments made as a result of the billing shall be remitted to the attorney general and deposited by him in a special account in the state treasury.

History: En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(part); amd. Sec. 20, Ch. 7, L. 1979.

44-2-314. Use of moneys — records. The state auditor is hereby authorized to draw warrants on this account upon request of the attorney general when such moneys are needed to pay any of the costs of keeping the system operative. A strict accounting shall be kept of all receipts and disbursements and shall be available as a matter of record to members of the appropriations committee of the house of representatives as they may require in the performance of their duties.

History: En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(part).

44-2-315. Removal from network upon nonpayment. Law enforcement agencies, other than the state of Montana or any of its subdivisions, that become 90 days delinquent in payment of any fees approved and assessed hereunder shall be notified that they will be removed from the network, and the department of justice shall take the necessary steps to carry out this provision.

History: En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(part).

44-2-316. Assessment for personnel. A special prorated assessment shall be made against all participating agencies for personnel necessary to assist in the operation at one central location or key point at which there is a federal intertie. This assessment shall be made monthly the same as the operational charge. It shall be transmitted, deposited, and drawn by warrant as are other warrants as provided in 44-2-312 through 44-2-315, except that the assessment may not be levied against the one central station for which the assessment is made.

History: En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(d); amd. Sec. 21, Ch. 7, L. 1979.

Part 4

Dental Records Missing Persons and Unidentified Bodies

44-2-401. Missing persons — dental records. (1) Any person who reports a missing person to a police or sheriff's department or other law enforcement authority must be given a form, supplied by the department of justice, that authorizes the release of the dental records of the missing person. The form must state that if the person is still missing 30 days after the report was made, the form should be signed by a relative of the missing person and taken to the dentist of the missing person, who must release the dental records or copies thereof to the relative. The records must be submitted by the relative within the next 10 days to the law enforcement authority to which the missing person report was made.

(2) If the missing person has not been found within 30 days after the report was made and no relative exists or can be located, the law enforcement authority may execute a signed written declaration stating that an investigation into the location of the missing person is being conducted and that the dental records may be necessary to the investigation. A dentist shall release the missing person's dental records upon presentation of the declaration.

(3) If a person reported missing has not been found within 45 days after the report was made, the law enforcement authority conducting the investigation shall confer with the county coroner or state medical examiner and write a missing person report on a form supplied by the department of justice. The report and any dental records or copies thereof obtained under this section must be submitted to the department of justice.

(4) The department of justice shall maintain an information file concerning each person reported to it as missing. The file must include information received under this section and any other information the department considers relevant to locating the missing person.

(5) The department files must be made available to any law enforcement agency attempting to locate missing persons.

(6) A law enforcement authority that finds a missing person or is notified that he has been found shall notify the department of justice, which shall return all dental records to the dentist and destroy the file prepared under subsection (4) concerning the person.

History: **En. Sec. 1, Ch. 389, L. 1983.**

44-2-402. Dental examination — records — report. (1) If the coroner cannot identify a body, he or the state medical examiner shall have a dentist examine the body, and if the body cannot be identified from the dental examination, the coroner or state medical examiner must send the dental examination results to the department of justice on a form supplied by the department.

(2) The department is a repository for dental examination records filed with it under this section. The department shall compare such records with dental records filed with it pursuant to 44-2-401 in an attempt to identify the body and must submit any findings to the coroner or state medical examiner.

History: **En. Sec. 2, Ch. 389, L. 1983.**

Part 5

Missing Children

44-2-501. Short title. This part may be cited as the "Missing Children Act of 1985".

History: **En. Sec. 1, Ch. 559, L. 1985.**

44-2-502. Definitions. As used in this part, the following definitions apply:

(1) "Missing child" means any person who has been reported as missing to a law enforcement authority and:

(a) who is under 18 years of age;

(b) whose temporary or permanent residence is in Montana or is believed to be in Montana; and

(c) whose location has not been determined.

(2) "Missing child report" is a report prepared on a form designed by the department of justice for use by private citizens and law enforcement authorities to report information about missing children to the missing children information program provided for in 44-2-503.

History: **En. Sec. 2, Ch. 559, L. 1985.**

44-2-503. Missing children information program. (1) The department of justice shall establish a missing children information program to create a central repository to aid in the location of missing children in Montana.

(2) The missing children information program shall:

(a) establish a system of intrastate communication of information relating to any child determined to be missing by the parent, guardian, or legal custodian of the child or by a law enforcement authority;

(b) provide a centralized file for the exchange of information on missing children within the state, including information obtained under the provisions of 44-2-401;

(c) interface with the national crime information center computer system for exchange of information on children suspected of interstate travel; and

(d) provide the superintendent of public instruction each month with a list of missing Montana school children for the purposes of 44-2-506.

History: **En. Sec. 3, Ch. 559, L. 1985.**

44-2-504. Reports to missing children information program. (1) All state, county, and municipal law enforcement authorities shall submit to the missing children information program provided for in 44-2-503 any missing child report and other information required by 44-2-401.

(2) Any parent, guardian, or legal custodian may submit a missing child report to the missing children information program on any child whose whereabouts are unknown, regardless of the circumstances, subsequent to making a report to the appropriate law enforcement authority within the county in which the child became missing.

(3) The parent, guardian, or legal custodian responsible for notifying the missing children information program or a law enforcement authority of a missing child shall immediately notify the authority and the program of any child whose location has been determined.

History: **En. Sec. 4, Ch. 559, L. 1985.**

44-2-505. Duties of law enforcement authority. Whenever a parent, guardian, or legal custodian of a child files a report with a law enforcement authority that the child is missing, the law enforcement authority shall:

(1) immediately inform all on-duty law enforcement officers of the existence of the missing child report;

(2) communicate the report to all other law enforcement authorities having jurisdiction in the county; and

(3) immediately enter the missing child report into the national crime information center computer system.

History: **En. Sec. 5, Ch. 559, L. 1985.**

44-2-506. List of missing Montana school children. (1) The superintendent of public instruction shall assist the missing children information program provided for in 44-2-503 in identifying and locating missing children who are enrolled in Montana public school districts in kindergarten through grade 12 by:

(a) collecting each month a list of missing Montana school children as provided by the missing children information program provided for in 44-2-503;

(b) distributing the list of missing school children on a monthly basis, unless the list has no change from the previous month's information, to all school districts admitting children to kindergarten through grade 12;

(c) designing the list to include pertinent available information for identification of the missing school child, including if possible a recent photograph of the child; and

(d) notifying the appropriate law enforcement agency and the missing children information program as soon as any additional information is obtained or contact is made with respect to a missing school child.

(2) Each school district in Montana shall:

(a) distribute to each school building within the district the list of missing school children provided for in subsection (1); and

(b) notify the appropriate law enforcement agency at the earliest known contact with any child whose name appears on the list of missing school children.

History: **En. Sec. 6, Ch. 559, L. 1985.**

44-2-507. Notice to parents of children absent from school. The trustees of any elementary or high school district shall establish procedures to be followed by school personnel for attempting to contact by the end of a school day any parent, guardian, or legal custodian whose child is absent from school but who has not reported the child as absent for the school day to determine whether the parent, guardian, or legal custodian is aware of the child's absence from school.

History: **En. Sec. 7, Ch. 559, L. 1985.**

Cross-References

School attendance, Title 20, ch. 5, part 1.

CHAPTER 3

MONTANA FORENSIC SCIENCE SYSTEM ACT

Part 1 — General Provisions
Division of Forensic Science

Section

44-3-101. Short title.
44-3-102. Purpose.
44-3-103. Repealed.
44-3-104. Functions of department.
44-3-105. Authority to accept grants.
44-3-106. Power of attorney general to employ personnel.

Part 2 — Medical Examiners

44-3-201. State medical examiner.
44-3-202. Removal of state medical examiner.
44-3-203. Associate medical examiners — qualifications.
44-3-204. Associate medical examiners — compensation.
44-3-205 through 44-3-210 reserved.
44-3-211. Duties of state medical examiner — general.
44-3-212. Duties of state medical examiner — appointments.
44-3-213. Report to county attorney.
44-3-214. Records.

Part 3 — Laboratory of Criminalistics

44-3-301. Purpose and functions of laboratory.
44-3-302. Fees for laboratory services.
44-3-303. Duties of laboratory director.
44-3-304. Removal of laboratory director.

Part 4 — Provisions Relating to Corpses

44-3-401. Exemption from liability for autopsy.
44-3-402. Repealed.

44-3-403. Burial of corpse.
44-3-404. Criminal penalty.

Chapter Cross-References

Office of County Coroner generally, Title 7, ch. 4, part 29.

Investigative procedures, Title 46, ch. 4.

Part 1

General Provisions Division of Forensic Science

44-3-101. Short title. This chapter shall be known as the "Montana Forensic Science System Act".

History: En. 82-427 by Sec. 1, Ch. 530, L. 1977; R.C.M. 1947, 82-427.

44-3-102. Purpose. The purposes of this chapter are to provide the personnel, facilities, and procedures to determine the cause of certain types of deaths by such investigation and examination as are in the public interest; to analyze specimens for law enforcement officers; and to provide reports, including oral testimony, concerning such investigation, examination, and analysis when in the public interest.

History: En. 82-428 by Sec. 2, Ch. 530, L. 1977; R.C.M. 1947, 82-428.

44-3-103. Repealed. Sec. 14, Ch. 503, L. 1985.

History: En. 82-429 by Sec. 3, Ch. 530, L. 1977; R.C.M. 1947, 82-429(part).

44-3-104. Functions of department. The forensics functions of the department of justice include operation of:

(1) a laboratory of criminalistics; and

(2) an office of forensic pathology.

History: En. 82-430 by Sec. 4, Ch. 530, L. 1977; R.C.M. 1947, 82-430; amd. Sec. 6, Ch. 503, L. 1985.

Compiler's Comments

1985 Amendment: Inserted "forensics" and substituted "department of justice" for reference to division of forensic science.

44-3-105. Authority to accept grants. The department of justice is authorized to accept federal and other moneys which may be made available to accomplish the purposes of this chapter.

History: En. 82-431 by Sec. 5, Ch. 530, L. 1977; R.C.M. 1947, 82-431; amd. Sec. 7, Ch. 503, L. 1985.

Compiler's Comments

1985 Amendment: Substituted "department of justice" for "division of forensic science".

44-3-106. Power of attorney general to employ personnel. The attorney general is authorized to employ such personnel as may be necessary to perform the functions of this chapter.

History: En. 82-435 by Sec. 9, Ch. 530, L. 1977; R.C.M. 1947, 82-435(part); amd. Sec. 8, Ch. 503, L. 1985.

Compiler's Comments

1985 Amendment: Substituted "perform the functions of this chapter" for "conduct the affairs of the division of forensic science".

Part 2

Medical Examiners

Part Cross-References

Office of County Coroner, Title 7, ch. 4, part 29.

Investigative criminal procedures, Title 46, ch. 4.

Cadavers and autopsies, Title 50, ch. 21.

Duty of medical examiner to report violations of Montana Elder Abuse Prevention Act, 53-5-511.

44-3-201. State medical examiner. A state medical examiner must be appointed by the attorney general to administer department functions assigned by 44-3-104. The state medical examiner may perform such other duties as may be assigned by the attorney general. The state medical examiner must be a forensic pathologist qualified and certified by the American board of pathology.

History: En. 82-429 by Sec. 3, Ch. 530, L. 1977; R.C.M. 1947, 82-429(part); amd. Sec. 9, Ch. 503, L. 1985.

Compiler's Comments

1985 Amendment: Substituted present language for ""State medical examiner" means the state medical examiner provided for in 2-15-2004".

44-3-202. Removal of state medical examiner. The state medical examiner may be removed from office only for neglect of duty, incompetency, or other good cause and only after a full hearing pursuant to 2-18-1011 through 2-18-1013.

History: En. 82-440 by Sec. 14, Ch. 530, L. 1977; R.C.M. 1947, 82-440(part).

44-3-203. Associate medical examiners — qualifications. Associate medical examiners must be physicians licensed to practice in Montana and may continue their private practice during their appointment.

History: En. 82-437 by Sec. 11, Ch. 530, L. 1977; R.C.M. 1947, 82-437(1).

Cross-References

Licensing of physicians, Title 37, ch. 3, part 3.

44-3-204. Associate medical examiners — compensation. (1) Associate medical examiners may be paid for their services an amount which the state medical examiner considers to be reasonable compensation and may be reimbursed for expenses actually incurred in the performance of their duties.

(2) The costs of services performed by associate medical examiners are chargeable to the county for which the service is performed.

History: En. 82-437 by Sec. 11, Ch. 530, L. 1977; R.C.M. 1947, 82-437(2), (3).

44-3-205 through 44-3-210 reserved.

44-3-211. Duties of state medical examiner — general. The duties of the state medical examiner include but are not limited to the following:

(1) providing assistance and consultation to associate medical examiners, coroners, and law enforcement officers;

(2) providing court testimony when necessary to accomplish the purposes of this chapter;

(3) stimulating and directing research in the field of forensic pathology; and

(4) maintaining an ongoing educational and training program for associate medical examiners, coroners, and law enforcement officers.

History: En. 82-436 by Sec. 10, Ch. 530, L. 1977; R.C.M. 1947, 82-436(1) thru (4).

Cross-References

Duties of County Coroner, 7-4-2911.

Coroner's report of traffic accident deaths, 61-7-112.

44-3-212. Duties of state medical examiner — appointments. The duties of the state medical examiner include but are not limited to the following:

(1) appointing the director of the laboratory of criminalistics;

(2) appointing one or more associate medical examiners who serve at his pleasure; and

(3) appointing, if he considers it necessary, an administrative assistant to handle administrative duties.

History: En. 82-436 by Sec. 10, Ch. 530, L. 1977; R.C.M. 1947, 82-436(5) thru (7).

44-3-213. Report to county attorney. When the cause of death has been established within reasonable medical certainty by the state medical examiner or his associate, whether by review of a coroner's report or by personal examination, the state medical examiner shall make available in writing to the county attorney his determination as to the cause of death.

History: En. 82-446 by Sec. 20, Ch. 530, L. 1977; R.C.M. 1947, 82-446; amd. Sec. 22, Ch. 7, L. 1979.

Cross-References

Coroner's report to County Attorney, 46-4-103.

44-3-214. Records. Copies of records and detailed findings of autopsy and laboratory investigations shall be maintained by the state medical examiner's office.

History: En. 82-447 by Sec. 21, Ch. 530, L. 1977; R.C.M. 1947, 82-447.

Part 3

Laboratory of Criminalistics

Part Cross-References

Driving under influence of alcohol or drugs, Title 61, ch. 8, part 4.

44-3-301. Purpose and functions of laboratory. (1) The laboratory's purpose is to perform analysis of specimens submitted by all Montana state, county, or city law enforcement officers and all state agencies and referral specimens from other states if accepted by the laboratory director.

(2) The laboratory's functions include analysis of toxicologic and criminalistic specimens which the laboratory director considers within the performance capability of the laboratory.

History: En. 82-438 by Sec. 12, Ch. 530, L. 1977; R.C.M. 1947, 82-438(1), (2).

44-3-302. Fees for laboratory services. The laboratory may charge reasonable fees for its services, except that it may not charge state, county, city, or municipal law enforcement officers or coroners of this state for services rendered. Fees collected under this section shall be deposited in an account in the state special revenue fund in the state treasury and used to pay operation expenses of the laboratory.

History: **En. 82-438 by Sec. 12, Ch. 530, L. 1977; R.C.M. 1947, 82-438(3); amd. Sec. 1, Ch. 277, L. 1983.**

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

44-3-303. Duties of laboratory director. The laboratory director shall:

(1) be responsible to the state medical examiner for supervision and direction of the laboratory;

(2) appoint laboratory personnel;

(3) render decisions as to the disposition of specimens; and

(4) perform all other duties required by the rules of the department.

History: **En. 82-439 by Sec. 13, Ch. 530, L. 1977; R.C.M. 1947, 82-439; amd. Sec. 10, Ch. 503, L. 1985.**

Compiler's Comments

1985 Amendment: In (4) substituted "department" for reference to the division of forensic science.

44-3-304. Removal of laboratory director. The laboratory director may be removed from office only for neglect of duty, incompetency, or other good cause and only after a full hearing pursuant to 2-18-1011 through 2-18-1013.

History: **En. 82-440 by Sec. 14, Ch. 530, L. 1977; R.C.M. 1947, 82-440(part).**

Part 4

Provisions Relating to Corpses

Part Cross-References

Investigation of death — autopsy, Title 46, ch. 4, part 1.

Cadavers and autopsies, Title 50, ch. 21.

Determination of death, Title 50, ch. 22.

44-3-401. Exemption from liability for autopsy. No criminal or civil action may arise against a medical examiner for performing an autopsy under this chapter or for performing an autopsy on request of a federal officer investigating a death within a federal jurisdiction.

History: **En. 82-441 by Sec. 15, Ch. 530, L. 1977; R.C.M. 1947, 82-441; amd. Sec. 1, Ch. 492, L. 1985.**

Compiler's Comments

1985 Amendment: After "this chapter", inserted remainder of sentence.

44-3-402. Repealed. Sec. 2, Ch. 408, L. 1983. (See 7-4-2917.)

History: **En. 82-442 by Sec. 16, Ch. 530, L. 1977; R.C.M. 1947, 82-442.**

44-3-403. Burial of corpse. (1) When a medical examiner or coroner takes custody of a body of a deceased person for purposes of examination and no other person claims the body, the coroner of the county in which the death occurred or the body was found shall cause it to be decently interred.

(2) If there is not sufficient property belonging to the estate of the deceased to pay the necessary expenses of the burial, the expenses are a charge against the county.

History: En. 82-443 by Sec. 17, Ch. 530, L. 1977; R.C.M. 1947, 82-443.

44-3-404. Criminal penalty. A person is guilty of a misdemeanor and may be fined not more than $500 or imprisoned in the county jail for not more than 1 year, or both, if he:

(1) purposely fails to report or conceals a death;

(2) refuses to make available prior medical or other information in a death investigation; or

(3) without an order from the coroner or state medical examiner, purposely touches, removes, or disturbs a corpse, its clothing, or anything near the corpse under investigation with the intent to alter the evidence or circumstances surrounding the death.

History: En. 82-445 by Sec. 19, Ch. 530, L. 1977; R.C.M. 1947, 82-445; amd. Sec. 23, Ch. 7, L. 1979.

CHAPTER 4

MISCELLANEOUS FUNCTIONS OF DEPARTMENT OF JUSTICE

Part 1 — Training Coordinator for County Attorneys

Section

44-4-101. Position established.
44-4-102. Appointment.
44-4-103. Functions.
44-4-104 through 44-4-110 reserved.
44-4-111. Request for special counsel services.
44-4-112. County payment for special counsel services.

Part 2 — Confidential License Plates and Registrations

44-4-201. Authorization to issue confidential plates and registrations.
44-4-202. Authority of attorney general to adopt rules.
44-4-203. Registration records.
44-4-204. Applications for confidential plates and registrations.
44-4-205. Use of confidential plates and registrations.
44-4-206. Revocation.

Part 3 — Board of Crime Control

44-4-301. Functions.

Chapter Cross-References

Duty of Attorney General with regard to crime victims, 46-24-103.

Part 1

Training Coordinator for County Attorneys

44-4-101. Position established. There is created within the department of justice the position of training coordinator for county attorneys.

History: En. Sec. 1, Ch. 353, L. 1973; R.C.M. 1947, 82-421; amd. Sec. 24, Ch. 7, L. 1979.

44-4-102. Appointment. The training coordinator shall be appointed by the attorney general from a list of three names proposed and submitted by the Montana county attorneys' association.

History: En. Sec. 2, Ch. 353, L. 1973; R.C.M. 1947, 82-422.

44-4-103. Functions. The training coordinator shall perform the functions assigned by the attorney general. The functions may include but are not limited to the following:

(1) providing local training in current aspects of the criminal law for county attorneys, city attorneys, and other law enforcement personnel. The training coordinator may require payment by city attorneys of a fee commensurate with the cost of the training.

(2) assisting in developing and disseminating standards, procedures, and policies which will insure that criminal laws are applied consistently and uniformly throughout Montana;

(3) consolidating present and past information on important aspects of the criminal law and providing a pool of official opinions, legal briefs, and other relevant criminal law information;

(4) providing assistance with research, briefs, or other technical services requested by a county attorney or law enforcement official;

(5) applying for and disbursing federal funds available to aid the prosecutorial function; and

(6) as provided in 44-4-111, acting as special counsel.

History: En. Sec. 3, Ch. 353, L. 1973; R.C.M. 1947, 82-423; amd. Sec. 25, Ch. 7, L. 1979; amd. Sec. 1, Ch. 7, L. 1983; amd. Sec. 1, Ch. 291, L. 1983.

Compiler's Comments

1983 Amendments: Chapter 7 inserted (6).

Chapter 291, in (1), inserted "city attorneys" after "county attorneys" and inserted last sentence.

44-4-104 through 44-4-110 reserved.

44-4-111. Request for special counsel services. (1) Except as provided in subsection (2), the training coordinator may act as special counsel upon request of the county attorney with the approval of the governing body of a county.

(2) If a case involves the prosecution of a member of the governing body of a county or a person related to him by consanguinity within the fourth degree or affinity within the second degree, the coordinator may, with the consent of the attorney general, act as special counsel upon request of the county attorney without approval of the governing body of the county.

History: En. Sec. 2, Ch. 7, L. 1983.

Cross-References

Affinity defined, 1-1-219.

Computing degrees of kindred, Title 72, ch. 11, part 1.

44-4-112. County payment for special counsel services. Whenever the training coordinator acts as special counsel as provided in 44-4-111, the department of justice shall charge the county a reasonable hourly fee for the training coordinator's services. Upon receipt of payment for these services, the department shall deposit these funds into the state general fund.

History: En. Sec. 3, Ch. 7, L. 1983.

Part 2

Confidential License Plates and Registrations

Part Cross-References

Records of Department of Justice open to public inspection, 61-3-101.

44-4-201. Authorization to issue confidential plates and registrations. The attorney general is authorized to issue to bona fide law enforcement agencies, except the highway patrol, within the state of Montana license plates and certificates of registration, which shall be exempt from all requirements for public disclosure. The issuance of such confidential registrations shall be subject to the provisions of this part.

History: En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(part).

44-4-202. Authority of attorney general to adopt rules. The attorney general may adopt rules necessary to implement the provisions of this part and to prevent the abuse or misuse of confidential registration plates.

History: En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(7).

44-4-203. Registration records. (1) The registration records of each vehicle so registered shall be maintained by the department of justice.

(2) The contents of such confidential registration records may be disclosed only at the discretion of the attorney general.

History: En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(4), (5).

44-4-204. Applications for confidential plates and registrations. Applications by law enforcement agencies operating within the state must be made to the attorney general on a form and in a manner prescribed by the attorney general.

History: En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(1).

44-4-205. Use of confidential plates and registrations. (1) Such license plates and registrations may be displayed and used only during and in the furtherance of official law enforcement investigations.

(2) Such confidential plates and certificates of registration may be used outside the state by federal agencies and state agencies upon application to the attorney general.

History: En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(2), (3).

44-4-206. Revocation. Such registrations may be revoked at any time by the attorney general at his discretion. On delivery of notice of revocation, the registrant shall, within 24 hours, deliver such license plates and certificate of registration to the attorney general or his duly appointed agent.

History: En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(6).

Part 3

Board of Crime Control

Part Cross-References

Creation and composition, 2-15-2006.

Training program required for reserve officers, 7-32-214.

Employment standards of Board, 7-32-303.

Qualifications of policemen, 7-32-4112.

44-4-301. Functions. As designated by the governor as the state planning agency under the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the board of crime control shall perform the functions assigned to it under that act. The board shall have the authority to establish minimum qualifying standards for employment of peace officers whose primary responsibility as authorized by law includes either the prevention and detection of crime or supervision of the enforcement of the penal, traffic, or fish and game laws of this state and its political subdivisions, require basic training for such officers, establish minimum standards for equipment and procedures and for advanced in-service training for such officers, and establish minimum standards for any law enforcement training schools administered by the state or any of its political subdivisions or agencies, to insure the public health, welfare, and safety. The board may waive the minimum qualification standard for good cause shown.

History: En. 82A-1207 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 61, L. 1973; amd. Sec. 1, Ch. 202, L. 1977; R.C.M. 1947, 82A-1207(4).

CHAPTER 5

CRIMINAL JUSTICE INFORMATION

Part 1 — General Provisions

Section

44-5-101. Short title.
44-5-102. Purpose.
44-5-103. Definitions.
44-5-104. Relationship to other statutes.
44-5-105. Department of justice — powers.
44-5-106 through 44-5-110 reserved.
44-5-111. Court order to enforce compliance.
44-5-112. Sanctions.

Part 2 — Collection and Processing

44-5-201. Scope of authority to collect, process, and preserve criminal justice information.
44-5-202. Photographs and fingerprints.
44-5-203 through 44-5-210 reserved.
44-5-211. Records — form, contents, limits on use.
44-5-212. Record preservation.

44-5-213. Procedures to ensure accuracy of criminal history records.
44-5-214. Inspection or transfer of criminal history records.
44-5-215. Challenge and correction.

Part 3 — Dissemination

44-5-301. Dissemination of public criminal justice information.
44-5-302. Dissemination of criminal history record information that is not public criminal justice information.
44-5-303. Dissemination of confidential criminal justice information.
44-5-304. Development of statistical information — agreements as to access.
44-5-305. Dissemination of copied or inspected records.

Part 4 — System Security

44-5-401. Criminal justice information system security.
44-5-402. Automated equipment.
44-5-403. Computer programming.
44-5-404. Manual equipment.
44-5-405. Personnel.

Part 5 — Criminal Intelligence Information Section

44-5-501. Creation of criminal intelligence information section — advisory council.
44-5-502. Definitions.
44-5-503. Duties of section.
44-5-504. Section standards and procedures.
44-5-505. Section supervisor and personnel.
44-5-506. Participating agencies.
44-5-507 through 44-5-510 reserved.
44-5-511. Functions of advisory council.
44-5-512 through 44-5-514 reserved.
44-5-515. Protection of individual privacy.

Part 1

General Provisions

44-5-101. Short title. This chapter may be cited as the "Montana Criminal Justice Information Act of 1979".

History: En. Sec. 1, Ch. 525, L. 1979.

44-5-102. Purpose. The purpose of this chapter is to require the photographing and fingerprinting of persons under certain circumstances, to ensure the accuracy and completeness of criminal history information, and to establish effective protection of individual privacy in confidential and nonconfidential criminal justice information collection, storage, and dissemination.

History: En. Sec. 2, Ch. 525, L. 1979; amd. Sec. 9, Ch. 145, L. 1985.

Compiler's Comments

1985 Amendment: At end of section substituted "confidential and nonconfidential criminal justice information collection, storage, and dissemination" for "criminal justice information recordkeeping".

44-5-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Access" means the ability to read, change, copy, use, transfer, or disseminate criminal justice information maintained by criminal justice agencies.

(2) "Administration of criminal justice" means the performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage, and dissemination of criminal justice information.

(3) "Confidential criminal justice information" means:

(a) criminal investigative information;

(b) criminal intelligence information;

(c) fingerprints and photographs;

(d) criminal justice information or records made confidential by law; and

(e) any other criminal justice information not clearly defined as public criminal justice information.

(4) (a) "Criminal history record information" means information about individuals collected by criminal justice agencies consisting of identifiable descriptions and notations of arrests; detentions; the filing of complaints, indictments, or informations and dispositions arising therefrom; sentences; correctional status; and release. It includes identification information, such as fingerprint records or photographs, unless such information is obtained for purposes other than the administration of criminal justice.

(b) Criminal history record information does not include:

(i) records of traffic offenses maintained by the department of justice; or

(ii) court records.

(5) (a) "Criminal intelligence information" means information associated with an identifiable individual, group, organization, or event compiled by a criminal justice agency:

(i) in the course of conducting an investigation relating to a major criminal conspiracy, projecting potential criminal operation, or producing an estimate of future major criminal activities; or

(ii) in relation to the reliability of information including information derived from reports of informants or investigators or from any type of surveillance.

(b) Criminal intelligence information does not include information relating to political surveillance or criminal investigative information.

(6) "Criminal investigative information" means information associated with an individual, group, organization, or event compiled by a criminal justice agency in the course of conducting an investigation of a crime or crimes. It includes information about a crime or crimes derived from reports of informants or investigators or from any type of surveillance. It does not include criminal intelligence information.

(7) "Criminal justice agency" means:

(a) any court with criminal jurisdiction;

(b) any state or local government agency designated by statute or by a governor's executive order to perform as its principal function the administration of criminal justice; or

(c) any local government agency not included under subsection (7)(b) that performs as its principal function the administration of criminal justice pursuant to an ordinance or local executive order.

(8) "Criminal justice information" means information relating to criminal justice collected, processed, or preserved by a criminal justice agency. It does not include the administrative records of a criminal justice agency.

(9) "Criminal justice information system" means a system, automated or manual, operated by federal, regional, state, or local governments or governmental organizations for collecting, processing, preserving, or disseminating criminal justice information. It includes equipment, facilities, procedures, and agreements.

(10) (a) "Disposition" means information disclosing that criminal proceedings against an individual have terminated and describing the nature of the termination or information relating to sentencing, correctional supervision, release from correctional supervision, the outcome of appellate or collateral review of criminal proceedings, or executive clemency. Criminal proceedings have terminated if a decision has been made not to bring charges or criminal proceedings have been concluded, abandoned, or indefinitely postponed.

(b) Particular dispositions include but are not limited to:

(i) conviction at trial or on a plea of guilty;

(ii) acquittal;

(iii) acquittal by reason of mental disease or defect;

(iv) acquittal by reason of mental incompetence;

(v) the sentence imposed, including all conditions attached thereto by the sentencing judge;

(vi) deferred imposition of sentence with any conditions of deferral;

(vii) nolle prosequi;

(viii) nolo contendere plea;

(ix) deferred prosecution or diversion;

(x) bond forfeiture;

(xi) death;

(xii) release as a result of a successful collateral attack;

(xiii) dismissal of criminal proceedings by the court with or without the commencement of a civil action for determination of mental incompetence or mental illness;

(xiv) a finding of civil incompetence or mental illness;

(xv) exercise of executive clemency;

(xvi) correctional placement on probation or parole or release; or

(xvii) revocation of probation or parole.

(c) A single arrest of an individual may result in more than one disposition.

(11) "Dissemination" means the communication or transfer of criminal justice information to individuals or agencies other than the criminal justice agency that maintains such information. It includes confirmation of the existence or nonexistence of criminal justice information.

(12) "Public criminal justice information" means information, except confidential criminal justice information:

(a) made public by law;

(b) of court records and proceedings;

(c) of convictions, deferred sentences, and deferred prosecutions;

(d) of postconviction proceedings and status;

(e) originated by a criminal justice agency, including:

(i) initial offense reports;

(ii) initial arrest records;
(iii) bail records; and
(iv) daily jail occupancy rosters;

(f) considered necessary by a criminal justice agency to secure public assistance in the apprehension of a suspect; or

(g) statistical information.

(13) "State repository" means the recordkeeping systems maintained by the department of justice pursuant to 44-2-201 in which criminal history record information is collected, processed, preserved, and disseminated.

(14) "Statistical information" means data derived from records in which individuals are not identified or identification is deleted and from which neither individual identity nor any other unique characteristic that could identify an individual is ascertainable.

History: **En. Sec. 3, Ch. 525, L. 1979.**

Compiler's Comments

Code Commissioner Correction: The Code Commissioner has substituted the department of justice for the division of motor vehicles in this section, because sec. 14, Ch. 503, L. 1985, repealed 2-15-2002, which had statutorily created the division, and sec. 1, Ch. 503 amended Title 61, Motor Vehicles, to substitute "department" for "division" throughout that title. The apparent intent was to eliminate the statutory status of the division, and therefore the Code Commissioner has changed statutory references accordingly (see 1-11-101(2)(g)).

44-5-104. Relationship to other statutes. Laws requiring disclosure of public records, writings, or information are not superseded by this chapter unless clearly inconsistent with its specific language. Laws requiring confidentiality of information contained in records or writings are not superseded by this chapter, which applies only when information may be disclosed consistent with such laws.

History: **En. Sec. 4, Ch. 525, L. 1979.**

Cross-References

Public records, Title 2, ch. 6.

44-5-105. Department of justice — powers. The department of justice may:

(1) adopt rules necessary to carry out the purposes of this chapter;

(2) hear and decide contested cases or challenges that may arise under the provisions of the Montana Administrative Procedure Act;

(3) conduct audits of the criminal history record information systems of a representative sample of state and local criminal justice agencies chosen annually on a random basis to determine whether they are in compliance with the provisions of this chapter. The function authorized in this subsection may not be assigned to any subagency that has supervisory authority over any criminal justice information system.

History: **En. Sec. 23, Ch. 525, L. 1979.**

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

44-5-106 through 44-5-110 reserved.

44-5-111. Court order to enforce compliance. Any person may apply for an order from a district court to enforce compliance with any provision of this chapter.

History: **En. Sec. 24, Ch. 525, L. 1979.**

44-5-112. Sanctions. The sanctions provided in 44-2-205 apply to any knowing or purposeful violation of this chapter.

History: **En. Sec. 22, Ch. 525, L. 1979.**

Part 2

Collection and Processing

Part Cross-References

Public records generally, Title 2, ch. 6, part 1.

44-5-201. Scope of authority to collect, process, and preserve criminal justice information. A criminal justice agency may collect, process, and preserve only that criminal justice information which is necessary for the performance of its authorized functions.

History: **En. Sec. 5, Ch. 525, L. 1979.**

44-5-202. Photographs and fingerprints. (1) The following agencies may, if authorized by subsections (2) through (5), collect, process, and preserve photographs and fingerprints:

(a) any criminal justice agency performing, under law, the functions of a police department or a sheriff's office, or both;

(b) the department of institutions; and

(c) the department of justice.

(2) The department of institutions may photograph and fingerprint anyone under the jurisdiction of the division of corrections or its successor.

(3) A criminal justice agency described in subsection (1)(a) shall photograph and fingerprint a person who has been arrested or noticed or summoned to appear to answer an information or indictment if:

(a) the charge is the commission of a felony;

(b) the identification of an accused is in issue; or

(c) it is required to do so by court order.

(4) Whenever a person charged with the commission of a felony is not arrested, he shall submit himself to the sheriff, chief of police, or other concerned law enforcement officer for fingerprinting at the time of his initial appearance in court to answer the information or indictment against him.

(5) A criminal justice agency described in subsection (1)(a) may photograph and fingerprint an accused if he has been arrested for the commission of a misdemeanor, except that an individual arrested for a traffic, regulatory, or fish and game offense may not be photographed or fingerprinted unless he is incarcerated.

(6) Within 10 days the originating agency shall send the state repository a copy of each fingerprint taken on a completed form provided by the state repository.

(7) The state repository shall compare the fingerprints received with those already on file in the state repository. If it is determined that the individual is wanted or is a fugitive from justice, the state repository shall at once inform the originating agency. If it is determined that the individual has a criminal record, the state repository shall send the originating agency a copy of the individual's complete criminal history record.

(8) Photographs and fingerprints taken shall be returned by the state repository to the originating agency, which shall return all copies to the individual from whom they were taken:

(a) if a court so orders; or

(b) upon the request of the individual:

(i) if no charges were filed;

(ii) if a misdemeanor charge did not result in a conviction; or

(iii) if the individual was found innocent of the offense charged.

History: En. Sec. 6, Ch. 525, L. 1979.

Cross-References

Requiring fingerprints for alcoholic beverage license, 16-4-403.

Fingerprints and photographs of youths, 41-5-304.

Right not to be fingerprinted, 53-20-143, 53-21-143.

Rights concerning photographs, 53-20-144, 53-21-144.

44-5-203 through 44-5-210 reserved.

44-5-211. Records — form, contents, limits on use. A criminal justice agency originating initial offense reports, initial arrest records, bail records, or daily jail occupancy rosters may maintain a chronological or numerical record of these items. These records may not contain any prior criminal history record information and may not be used to gain access to any other public criminal justice information.

History: En. Sec. 7, Ch. 525, L. 1979.

44-5-212. Record preservation. Unless required by federal law, expunging, purging, or destroying of criminal justice information is not required based on the length of time such records are held.

History: En. Sec. 8, Ch. 525, L. 1979.

44-5-213. Procedures to ensure accuracy of criminal history records. In order to ensure complete and accurate criminal history record information:

(1) the department of justice shall maintain a centralized state repository of criminal history record information to serve all criminal justice agencies in the state;

(2) dispositions resulting from formal proceedings in a court having jurisdiction in a criminal action against an individual who has been photographed and fingerprinted under 44-5-202 shall be reported to the originating agency and the state repository within 15 days. If the dispositions can readily be collected and reported through the court system, the dispositions may be submitted to the state repository by the administrative office of the courts.

(3) an originating agency shall advise the state repository within 30 days of all dispositions concerning the termination of criminal proceedings against an individual who has been photographed and fingerprinted under 44-5-202;

(4) the department of institutions shall advise the state repository within 30 days of all dispositions subsequent to conviction of an individual who has been photographed and fingerprinted under 44-5-202;

(5) each criminal justice agency shall query the state repository prior to dissemination of any criminal history record information to ensure the timeliness of the information. When no final disposition is shown by the state

repository records, the state repository shall query the source of the document or other appropriate source for current status. Inquiries shall be made prior to any dissemination except in those cases in which time is of the essence and the repository is technically incapable of responding within the necessary time period. If time is of the essence, the inquiry shall still be made and the response shall be forwarded as soon as it is received.

(6) each criminal justice agency shall ensure that all its criminal justice information is complete, accurate, and current; and

(7) the department of justice shall adopt rules for criminal justice agencies other than those that are part of the judicial branch of government to implement this section. The department of justice may adopt rules for the same purpose for the judicial branch of government if the supreme court consents to the rules.

History: En. Sec. 9, Ch. 525, L. 1979.

44-5-214. Inspection or transfer of criminal history records. (1) An individual or his agent may inspect any criminal history record information maintained about the individual or transfer copies of that information to any other person upon the presentation of satisfactory identification to the criminal justice agency maintaining the criminal history record information. Fingerprints may be required for identification. An agent must also submit a notarized authorization from his principal or an authorization order from a district court.

(2) If an individual's criminal history record information is maintained in the state repository, copies of the records shall be transferred to the local agency for inspection upon proper request of the individual or his agent. A local agency shall honor a verified affidavit accompanying a request by an individual for a transfer of copies of criminal history record information concerning that individual to a criminal justice agency of another state for the purpose of complying with this chapter.

(3) (a) An individual may request inspection or transfer of copies, or both, of criminal history record information only during normal working hours.

(b) Copies of records may be made by or at the request of a properly identified individual or his authorized agent. If a machine for making copies is not reasonably available, the individual or his agent may make handwritten copies. A charge, not to exceed the cost of labor and materials, may be made by the agency for machine-produced copies. Each copy must be clearly marked to indicate that it is for inspection only.

(c) An agency employee should be available to answer questions concerning record content. A record of each request to inspect records under this section must be maintained.

History: En. Sec. 19, Ch. 525, L. 1979.

Cross-References

Dissemination of public criminal justice information, 44-5-301.

Dissemination of criminal history records, 44-5-302.

Dissemination of confidential criminal justice information, 44-5-303.

Dissemination of copied or inspected records, 44-5-305.

44-5-215. Challenge and correction. (1) After inspection of criminal history record information, an individual may contest the accuracy or completeness, or both, of the information about himself.

(2) If the agency maintaining the criminal history record information does not correct it to the individual's satisfaction, the individual may request review and correction by the executive head of the agency.

(3) If the requested correction is denied by the head of the agency, the individual may present a challenge to the department of justice.

(4) If the agency in charge of the record in question can verify the accuracy of its record by communication with the originating criminal justice agency, it shall do so. If accuracy or completeness cannot be verified and the agency primarily originating the information containing the alleged error or omission is in the state, the individual shall address his challenge to that agency. If information necessary to verify the accuracy or completeness of the record cannot be obtained by the originating agency, it may rely on verified written documents or include the individual's allegation in its records in dissemination until there is a final disposition of the challenge.

(5) If the challenge is successful, the agency shall:

(a) supply to the individual, if requested, a list of those noncriminal justice agencies which have received copies of the criminal history record information about the individual; and

(b) immediately correct its records and notify all criminal justice agencies to which it has given erroneous or incomplete information of these changes.

History: **En. Sec. 20, Ch. 525, L. 1979.**

Cross-References

Torts by governmental entities generally, Title 2, ch. 9, parts 1 and 3.

Record preservation, 44-5-212.

Part 3

Dissemination

44-5-301. Dissemination of public criminal justice information. (1) There are no restrictions on the dissemination of public criminal justice information except for the following:

(a) Whenever a record or index is compiled by name or universal identifier from a manual or automated system, only information about convictions, deferred prosecutions, or deferred sentences is available to the public.

(b) Whenever the conviction record reflects only misdemeanors or deferred prosecutions and whenever there are no convictions except for traffic, regulatory, or fish and game offenses for a period of 5 years from the date of the last conviction, no record or index may be disseminated pursuant to subsection (1)(a). However, the original documents are available to the public from the originating criminal justice agency.

(2) All public criminal justice information is available from the agency that is the source of the original documents and that is authorized to maintain the documents according to applicable law. These documents shall be open, subject to the restrictions in this section, during the normal business hours of the agency. A reasonable charge may be made by a criminal justice agency for providing a copy of public criminal justice information.

History: **En. Sec. 10, Ch. 525, L. 1979.**

44-5-302. Dissemination of criminal history record information that is not public criminal justice information. Criminal history record information may not be disseminated to agencies other than criminal justice agencies unless:

(1) the information is disseminated with the consent or at the request of the individual about whom it relates according to procedures specified in 44-5-214 and 44-5-215;

(2) a district court considers dissemination necessary;

(3) the information is disseminated in compliance with 44-5-304; or

(4) the agency receiving the information is authorized by law to receive it.

History: En. Sec. 11, Ch. 525, L. 1979.

44-5-303. Dissemination of confidential criminal justice information. Dissemination of confidential criminal justice information is restricted to criminal justice agencies or to those authorized by law to receive it. A criminal justice agency that accepts confidential criminal justice information assumes equal responsibility for the security of such information with the originating agency. Whenever confidential criminal justice information is disseminated, it must be designated as confidential.

History: En. Sec. 12, Ch. 525, L. 1979.

Cross-References

Inspection or transfer of criminal history records, 44-5-214.

44-5-304. Development of statistical information — agreements as to access. (1) An individual or agency with the express purpose of developing statistical information may have access to criminal history record information pursuant to an agreement with a criminal justice agency. The agreement shall contain, but need not be limited to, the following provisions:

(a) specific authorization for access to specific information;

(b) a limitation on the use of the information to research, evaluative, or statistical purposes;

(c) assurance of the confidentiality and security of the information; and

(d) sanctions for violations of the agreement or this section.

(2) Proposed agreements and any completed research, statistical, or evaluative study or product developed from the use of statistical information is subject to review and approval by the department of justice to ensure compliance with this chapter.

History: En. Sec. 13, Ch. 525, L. 1979.

44-5-305. Dissemination of copied or inspected records. (1) Criminal justice agencies shall maintain a record of all agencies and individuals to which or whom copies of criminal history record information have been disseminated.

(2) A criminal justice agency supplying criminal history record information to an individual upon request is not responsible for the use or secondary dissemination of copied or inspected information and is not required to furnish updated information except upon a subsequent request by the individual.

History: En. Sec. 21, Ch. 525, L. 1979.

Part 4

System Security

Part Cross-References

Public records, Title 2, ch. 6.

44-5-401. Criminal justice information system security. Provisions for the recording, preservation, dissemination, and management of court records are made by statute and may be supplemented by supreme court rule. Any other criminal justice agency shall protect the security of any criminal justice information system, automated or manual, under its control by taking reasonable precautions and establishing procedures to protect the system and data stored in the system from damage and for the prevention of and recovery from hazards such as fire, flood, power failure, and entry into secure areas by unauthorized persons.

History: En. Sec. 14, Ch. 525, L. 1979.

44-5-402. Automated equipment. In an automated criminal justice information system, information shall be collected, processed, and preserved on a computer dedicated solely to criminal justice information, except that, if this is impractical, a central computer may be used if adequate safeguards are built into the criminal justice information system to prevent unauthorized inquiry, modification, or destruction of criminal justice information in conformity with the current federal regulations in 28 C.F.R. section 20.21(f) or any amendment thereto.

History: En. Sec. 15, Ch. 525, L. 1979.

44-5-403. Computer programming. Procedures for each automated criminal justice information system shall assure that the information is secured by the following programming techniques and security procedures:

(1) the assignment of a terminal identification code to each terminal authorized to access the criminal justice information system;

(2) the assignment of a unique identification number to each authorized terminal operator, which number must be used to gain access to the files;

(3) the maintenance of a record of each inquiry to identify the inquiring agency, the program used to make the inquiry, the date of the inquiry, and the name of the file being queried;

(4) computer programming controls to ensure that each terminal user can obtain only that information which the user is authorized to use;

(5) creation and use of a safe place for storage of duplicate computer files;

(6) built-in program controls to ensure that each terminal is limited to the appropriate or authorized information that can be input, modified, or canceled from it;

(7) destruction or safeguarding of system documentation and data input forms; and

(8) creation of reports to provide for an audit trail and periodic review of file accessed, modifications, and deletions. All criminal justice intelligence information shall be identified as such.

History: En. Sec. 16, Ch. 525, L. 1979.

44-5-404. Manual equipment. In a manual criminal justice information system, information shall be protected as follows:

(1) provision of adequate physical security;

(2) marking of all criminal justice intelligence information and precautions against unauthorized copying; and

(3) establishment of a log of each external inquiry to reflect the identity of the inquirer, the date of inquiry, and the name of the files being queried.

History: **En. Sec. 17, Ch. 525, L. 1979.**

44-5-405. Personnel. Each automated or manual criminal justice information system, except those that are or may be maintained by courts of criminal jurisdiction, shall establish the following procedures to ensure that personnel security is achieved and maintained:

(1) Applicants for employment and persons presently employed to work with or in a computer center or manual system that processes criminal justice information are subject to investigation by the employing agency to establish their honesty and fitness to handle sensitive information. Consent to such an investigation may be a prerequisite to the processing of an employment application.

(2) The character and fitness of criminal justice information system personnel to handle sensitive information, including personnel working with manual criminal justice file systems and terminal operators as well as personnel working with the system at a central computer, shall be reviewed by the employing agency periodically. Serious violations or deficiencies under this section are grounds for dismissal.

(3) Each criminal justice agency shall develop and maintain an in-service training program and security manual to ensure that each employee who works with or has access to the criminal justice information system annually reviews and understands the nature and importance of the system's security provisions.

(4) With regard to automated systems, the criminal justice agency shall screen and may reject for employment and initiate or cause to be initiated administrative action relating to employees having direct access to criminal history record information as required by federal regulations in 28 C.F.R. section 20.21(f) or any amendment thereto.

History: **En. Sec. 18, Ch. 525, L. 1979.**

Cross-References

Code of Ethics, Title 2, ch. 2, part 1.

Official misconduct, 45-7-401.

Part 5

Criminal Intelligence Information Section

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

General duties of Attorney General, 2-15-501.

44-5-501. Creation of criminal intelligence information section — advisory council. (1) The department of justice may create a criminal intelligence information section.

(2) (a) If a section is created under subsection (1), the attorney general shall establish a criminal intelligence information advisory council in accordance with 2-15-122, consisting of one representative from the Montana chiefs of police association, one representative from the Montana sheriffs and peace officers association, one representative from the Montana county attorneys association, one member of the department of justice, a member of the

judiciary committee of either the house of representatives or the senate, and a citizen at large.

(b) The representatives from the Montana chiefs of police association and the Montana sheriffs and peace officers association must be sworn officers of a participating agency.

(c) The department of justice member may not be an employee of the department involved in criminal intelligence or criminal investigation work.

(d) Members of the advisory council serve at the pleasure of the attorney general.

(e) The department shall provide staff and support services for the advisory council.

History: En. Sec. 1, Ch. 145, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.

Compiler's Comments

1985 Amendment — Correction: In (1) following "may create" deleted "within the criminal investigation bureau"; and in (2)(e) substituted "department" for "criminal investigation bureau". Using the amendment to 61-3-108(2)(a) made by section 12 of Ch. 503 as a model, the Code Commissioner, in (2)(c), substituted "department involved in criminal intelligence or criminal investigation work" for "criminal investigation bureau or any of its sections" in order to comply with the intent of section 13(2) of Ch. 503.

44-5-502. Definitions. In this part the following definitions apply:

(1) "Advisory council" means the criminal intelligence information advisory council provided for in 44-5-501.

(2) "Section" means the criminal intelligence information section provided for in 44-5-501.

History: En. Sec. 2, Ch. 145, L. 1985.

44-5-503. Duties of section. The section may not initiate investigations to gather criminal intelligence information, but subject to standards and procedures provided by this part and to other limitations imposed by law, the section shall:

(1) establish and maintain liaison with participating law enforcement agencies to foster a meaningful exchange of criminal intelligence information;

(2) develop and maintain a system for collecting, reviewing, storing, referencing, indexing, and disseminating criminal intelligence information;

(3) receive and collect information from participating law enforcement agencies;

(4) develop an analytical capability to provide useful strategic and tactical intelligence reports;

(5) maintain the integrity and security of all information collected by the section; and

(6) develop methods of evaluating the effectiveness of the section in accomplishing its goals and in safeguarding the privacy of all individuals about whom the section has information.

History: En. Sec. 3, Ch. 145, L. 1985.

Cross-References

Teletypewriter communications system, Title 44, ch. 2, part 3.

Criminal justice information — collection and processing, Title 44, ch. 5, part 2.

44-5-504. Section standards and procedures. The attorney general, in conjunction with the department of justice and after considering recommendations of the advisory council, shall adopt standards and procedures for the operation of the section. The standards and procedures must ensure compliance with this part by the section and must include safeguards of individual privacy rights as provided in this chapter.

History: En. Sec. 8, Ch. 145, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.

Compiler's Comments

1985 Amendment: In first sentence substituted "department of justice" for "criminal investigation bureau".

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

44-5-505. Section supervisor and personnel. (1) The attorney general shall designate a section supervisor.

(2) The department of justice may employ necessary personnel for the efficient and secure operation of the section, subject to approval of the personnel by the attorney general.

History: En. Sec. 4, Ch. 145, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.

Compiler's Comments

1985 Amendment — Correction: In (2) substituted "department of justice" for "criminal investigation bureau". In (1), to comply with the intent of section 13(2) of Ch. 503, the Code Commissioner substituted "The attorney general" for "The chief of the criminal investigation bureau of the department of justice".

44-5-506. Participating agencies. (1) Agencies eligible for participation in the section are:

(a) municipal police departments;

(b) sheriff's departments; and

(c) sections of the department of justice engaged in criminal investigation.

(2) A participant in the section must be an eligible agency that has been authorized by the attorney general to receive criminal intelligence information from the section under this part.

History: En. Sec. 6, Ch. 145, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.

Compiler's Comments

1985 Amendment — Correction: In (1)(c) following "sections" deleted "of the criminal investigation bureau" and, to comply with the intent of section 13(2) of Ch. 503 and preserve the intent of section 6 of Ch. 145, L. 1985, which enacted 44-5-506, inserted "engaged in criminal investigation" following "department of justice".

Cross-References

Sheriff's department, Title 7, ch. 32, part 21.

Municipal police force, Title 7, ch. 32, part 41.

Criminal investigation, Title 44, ch. 2, part 1.

44-5-507 through 44-5-510 reserved.

44-5-511. Functions of advisory council. The advisory council shall:

(1) recommend general policies for the operation of the section;

(2) recommend the approval or denial of an application from an eligible agency for participation in the section;

(3) recommend the suspension of a participant agency for due cause; and

(4) recommend, if appropriate, the reinstatement of a suspended participant agency.

History: En. Sec. 5, Ch. 145, L. 1985.

Cross-References

Creation of advisory councils, 2-15-122.

44-5-512 through 44-5-514 reserved.

44-5-515. Protection of individual privacy. The advisory council shall review and evaluate the implementation of the section's safeguards of individual privacy rights adopted pursuant to 44-5-504 and periodically inspect all records relating to dissemination of information to determine whether they are in compliance with this part and with the standards and procedures adopted by the section. The advisory council shall make an annual report to the attorney general.

History: **En. Sec. 7, Ch. 145, L. 1985.**

CHAPTERS 6 THROUGH 9

RESERVED

CHAPTER 10

LAW ENFORCEMENT ACADEMY

Part 1 — General Provisions

Section
44-10-101. Short title.
44-10-102. Purpose.
44-10-103. Establishment of academy.

Part 2 — Government of Academy

44-10-201. Department of justice to govern academy.
44-10-202. Powers and duties of department.
44-10-203. Sessions to be determined annually.

Part 3 — Officers Who Attend Academy

44-10-301. Eligibility.
44-10-302. Retention of employment rights.
44-10-303. Expenditure of funds by local governments authorized.

Chapter Cross-References

Training in victim assistance, 46-24-102.

Part 1

General Provisions

44-10-101. Short title. This chapter may be cited as the "Montana Law Enforcement Academy Act".

History: **En. Sec. 1, Ch. 7, L. 1959; R.C.M. 1947, 75-5201.**

44-10-102. Purpose. The purpose of this chapter shall be to establish a Montana law enforcement academy to provide Montana law enforcement officers with a means of securing additional training in the field of law enforcement.

History: **En. Sec. 2, Ch. 7, L. 1959; R.C.M. 1947, 75-5202.**

44-10-103. Establishment of academy. There is hereby established a Montana law enforcement academy.

History: En. Sec. 3, Ch. 7, L. 1959; amd. Sec. 1, Ch. 233, L. 1967; R.C.M. 1947, 75-5203(part); amd. Sec. 1, Ch. 431, L. 1985.

Compiler's Comments

1985 Amendment: At end deleted "to be located at one of the units of the Montana university system, which unit shall be selected in the manner hereinafter provided."

Part 2

Government of Academy

44-10-201. Department of justice to govern academy. The Montana law enforcement academy shall be governed by the department of justice.

History: En. Sec. 5, Ch. 7, L. 1959; amd. Sec. 1, Ch. 28, L. 1961; amd. Sec. 1, Ch. 88, L. 1969; R.C.M. 1947, 75-5205.

44-10-202. Powers and duties of department. The department of justice shall have the power and it shall be its duty to:

(1) establish qualifications for admission to the academy;

(2) select from among the qualified applicants those officers who are to attend the academy each year;

(3) determine the curriculum and methods of training for the officers attending the academy;

(4) select and hire such staff as it deems necessary to implement this chapter;

(5) establish rules for the conduct of the officers at the academy;

(6) award appropriate certificates to the officers who successfully complete their training;

(7) provide for the keeping of permanent records of enrollment, attendance, and graduation and such other records as the department may deem necessary;

(8) make a yearly report in writing of the activities of the academy. Copies of this report shall be sent to the governor, attorney general, and secretary of state.

(9) do all other things necessary and desirable for the establishment and operation of the academy not inconsistent with this chapter or the constitution and statutes of the state of Montana;

(10) accept and expend grants from federal, state, county, and city governments or private persons, associations, or corporations.

History: En. Sec. 6, Ch. 7, L. 1959; amd. Sec. 2, Ch. 233, L. 1967; amd. Sec. 1, Ch. 331, L. 1971; R.C.M. 1947, 75-5206; amd. Sec. 2, Ch. 431, L. 1985.

Compiler's Comments

1985 Amendment: Deleted former (1) that read: "choose a site for the Montana law enforcement academy at the unit of the university system of Montana which in the determination of the department is best suited for the needs of the academy"; and in (6) at end, deleted "which certificates shall be signed by the president of the selected university unit".

44-10-203. Sessions to be determined annually. The academy shall be in session for a period to be annually determined by the department of justice.

History: **En. Sec. 3, Ch. 7, L. 1959; amd. Sec. 1, Ch. 233, L. 1967; R.C.M. 1947, 75-5203(part).**

Part 3

Officers Who Attend Academy

44-10-301. Eligibility. All bona fide Montana law enforcement officers shall be eligible to apply for admission to this academy.

History: **En. Sec. 4, Ch. 7, L. 1959; R.C.M. 1947, 75-5204.**

44-10-302. Retention of employment rights. All officers shall be paid their regular salary during their attendance at the academy, and time spent in such attendance shall not be deducted from the vacation to which any attending officer is entitled. No officer shall lose any pension, seniority, or other rights by reason of attendance at the academy.

History: **En. Sec. 7, Ch. 7, L. 1959; R.C.M. 1947, 75-5207.**

44-10-303. Expenditure of funds by local governments authorized. The expenditure of funds by any city, town, municipality, or county for the board, room, and travel expenses of the officers attending the academy shall be a lawful expenditure.

History: **En. Sec. 8, Ch. 7, L. 1959; amd. Sec. 3, Ch. 233, L. 1967; R.C.M. 1947, 75-5208.**

CHAPTER 11

MUTUAL ASSISTANCE
RIGHTS OF ASSISTING OFFICERS

Part 1 — General Provisions

Section

44-11-101. Mutual assistance authorized — powers and duties of assisting officers.
44-11-102. Liability of assisted entity for obligation resulting from assistance.

Part 2 — Rights of Employment

44-11-201. Retention of rights of employment.
44-11-202. Employing entity to pay normal expenses of assisting officer — reimbursement.

Part 3 — Interstate Law Enforcement Mutual Aid Act

44-11-301. Short title.
44-11-302. Purpose.
44-11-303. Definitions.
44-11-304. Authorization to enter agreement — general content — authority of peace officer.
44-11-305. Detailed content of agreement.
44-11-306. Right of state in actions involving agreements.
44-11-307. Agreement not to relieve agency of duties.
44-11-308. Limitation of powers.
44-11-309. Submission of agreement to attorney general.

44-11-310. Filing of agreement.
44-11-311. Authorization to appropriate funds for purpose of agreement.
44-11-312. Effect of other law.

Part 1

General Provisions

44-11-101. Mutual assistance authorized — powers and duties of assisting officers. A peace officer or any law enforcement entity of any county or municipality or a state government law enforcement entity may request the assistance of a peace officer from another law enforcement entity within the state of Montana. A peace officer, while in the jurisdiction of the requesting officer or entity and while on such request for assistance, has the same powers, duties, rights, privileges, and immunities as a peace officer of the requesting entity and is under the authority of the requesting officer or entity.

History: En. 11-1851 by Sec. 1, Ch. 337, L. 1977; R.C.M. 1947, 11-1851; amd. Sec. 1, Ch. 22, L. 1985.

Compiler's Comments

1985 Amendment: Near beginning of second sentence inserted "in the jurisdiction of the requesting officer or entity and while"; and at end of section inserted "and is under the authority of the requesting officer or entity".

Cross-References

Technical assistance by County Attorney Training Coordinator to law enforcement official, 44-4-103.

44-11-102. Liability of assisted entity for obligation resulting from assistance. A law enforcement entity requesting assistance under 44-11-101 shall indemnify the assisting peace officer, his legal representative in case of death, or the furnishing law enforcement entity for any liability or obligation to indemnify created by 2-9-305 that may result from the assistance furnished.

History: En. 11-1854 by Sec. 4, Ch. 337, L. 1977; R.C.M. 1947, 11-1854.

Part 2

Rights of Employment

44-11-201. Retention of rights of employment. A peace officer rendering assistance under 44-11-101 is entitled to the same wage, salary, pension, workers' compensation, and all other service rights for such service as for service rendered within the law enforcement entity in which he is normally employed.

History: En. 11-1852 by Sec. 2, Ch. 337, L. 1977; R.C.M. 1947, 11-1852.

44-11-202. Employing entity to pay normal expenses of assisting officer — reimbursement. (1) The law enforcement entity employing a peace officer who renders assistance shall make all wage, pension, and disability payments and payments for damage to clothing and equipment due to the officer as a result of the rendering of assistance and shall pay any medical expense incurred by the officer in rendering assistance for which the officer is not otherwise entitled to reimbursement by operation of law or a contract. The employing entity shall also provide workers' compensation coverage for its employees while they are rendering assistance.

(2) If it so requests, the law enforcement entity must be reimbursed by the law enforcement entity that requested the services for all payments made for wages and damage to clothing and equipment and for any medical expense for which neither the employing entity nor the officer is otherwise entitled to reimbursement by operation of law or a contract.

History: En. 11-1853 by Sec. 3, Ch. 337, L. 1977; R.C.M. 1947, 11-1853; amd. Sec. 26, Ch. 7, L. 1979.

Part 3

Interstate Law Enforcement Mutual Aid Act

44-11-301. Short title. This part shall be known and may be cited as the "Interstate Law Enforcement Mutual Aid Act".

History: En. Sec. 1, Ch. 318, L. 1983.

44-11-302. Purpose. It is the purpose of this part to permit one or more law enforcement agencies of this state to enter into mutual aid agreements, on the basis of mutual advantage, with one or more law enforcement agencies of any other state or the United States in order to facilitate and coordinate efficient, cooperative enforcement efforts directed at mutual law enforcement problems transcending jurisdictional boundaries and to insure the prompt and effective delivery of law enforcement and emergency services in areas that, due to geographic remoteness, population sparsity, and economic and other factors are in need of an increased law enforcement presence.

History: En. Sec. 2, Ch. 318, L. 1983.

44-11-303. Definitions. When used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Law enforcement agency" means a public agency lawfully established by statute or executive order that is responsible for the prevention and detection of crime and the enforcement of penal, traffic, regulatory, or game laws.

(2) "Law enforcement agency of this state" or "law enforcement agency of another (or any other) state" includes, respectively, a law enforcement agency of a political subdivision of this state and a law enforcement agency of a political subdivision of another state.

(3) "Mutual aid agreement" or "agreement" means an agreement between two or more law enforcement agencies, consistent with the purposes of this part.

(4) "Party law enforcement agency" means a law enforcement agency that is a party to a mutual aid agreement as set forth in this part.

(5) "Peace officer" has the meaning as the term is defined in 46-1-201.

History: En. Sec. 3, Ch. 318, L. 1983.

44-11-304. Authorization to enter agreement — general content — authority of peace officer. (1) Any one or more law enforcement agencies of this state may enter into a mutual aid agreement with any one or more law enforcement agencies of any other state or the United States to provide the law enforcement or emergency services that all of the parties are authorized by law to perform. If required by applicable law, the agreement must be authorized and approved by the governing body of each party to the agreement.

(2) The agreement must fully set forth the powers, rights, and obligations of the parties to the agreement.

(3) Subject to 44-11-308, a mutual aid agreement may grant a peace officer of any party law enforcement agency acting within the territorial jurisdiction of any other party law enforcement agency authority to act as if he were a duly appointed and qualified peace officer of the law enforcement agency he is assisting.

History: **En. Sec. 4, Ch. 318, L. 1983.**

44-11-305. Detailed content of agreement. The agreement authorized by 44-11-304 must specify the following:

(1) its duration;

(2) the precise organization, composition, and nature of any separate legal entity created thereby;

(3) the purpose of the agreement;

(4) the manner of financing the agreement and establishing and maintaining a budget therefor;

(5) the method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;

(6) provision for administering the agreement, which may include creation of a joint board responsible for such administration;

(7) the manner of acquiring, holding, and disposing of real and personal property used in the agreement;

(8) the minimum standards for law enforcement personnel implementing the provisions of the agreement;

(9) the respective liability of each party to the agreement for the actions of law enforcement officers when acting under the provisions of the agreement;

(10) the minimum insurance required of each party to the agreement;

(11) the exact chain of command or delegation of authority to be followed by law enforcement officials acting under the provisions of the agreement;

(12) the precise enforcement authority that the peace officers of each party law enforcement agency may exercise; and

(13) any other necessary and proper matters.

History: **En. Sec. 5, Ch. 318, L. 1983.**

44-11-306. Right of state in actions involving agreements. In any case or controversy involving performance or interpretation of or liability under a mutual aid agreement entered into between one or more law enforcement agencies of political subdivisions of this state and one or more law enforcement agencies of another state or of the United States, the parties to the agreement are the real parties in interest. This state may maintain an action against any law enforcement agency whose default, failure, performance, or other conduct caused or contributed to any liability incurred by this state.

History: **En. Sec. 6, Ch. 318, L. 1983.**

44-11-307. Agreement not to relieve agency of duties. No agreement made under this part may relieve any law enforcement agency of this state of any duty imposed upon it by law. Timely performance of such a duty by a joint board or other legal or administrative entity created by a mutual aid agreement may be offered in satisfaction of the duty.

History: **En. Sec. 7, Ch. 318, L. 1983.**

44-11-308. Limitation of powers. Except for the right granted by this part to jointly exercise powers, this part does not authorize any law enforcement agency of this state to exercise any power that it is not otherwise authorized to exercise.

History: **En. Sec. 8, Ch. 318, L. 1983.**

44-11-309. Submission of agreement to attorney general. (1) As a condition precedent to an agreement becoming effective under this part, the agreement must be submitted to and receive the approval of the attorney general of Montana.

(2) The attorney general shall approve an agreement submitted to him under this part unless he finds that it is not in proper form, does not meet the requirements set forth in this part, or otherwise does not conform to the laws of Montana. If he disapproves an agreement, he shall provide a detailed, written statement to the governing bodies of the party law enforcement agencies.

(3) If the attorney general does not disapprove an agreement within 60 days after its submission to him, it is considered approved by him.

History: **En. Sec. 9, Ch. 318, L. 1983.**

44-11-310. Filing of agreement. Within 20 days after approval by the attorney general, an agreement made pursuant to this part must be filed in the office of:

(1) each clerk and recorder of each county of this state where the principal office of one of the parties to the agreement is located; and

(2) the secretary of state.

History: **En. Sec. 10, Ch. 318, L. 1983.**

44-11-311. Authorization to appropriate funds for purpose of agreement. Any law enforcement agency of this state may appropriate funds for and may sell, lease, or otherwise supply material to any entity created for the purpose of performance of an agreement and may provide such personnel or services therefor as are within its authority to furnish.

History: **En. Sec. 11, Ch. 318, L. 1983.**

44-11-312. Effect of other law. The procedures and remedies provided in this part apply to the exclusion of those remedies and procedures for interlocal agreements generally under Title 7, chapter 11, part 1.

History: **En. Sec. 12, Ch. 318, L. 1983.**

CHAPTER 12

SEIZURES RELATED TO CONTROLLED SUBSTANCES

Part 1 — General Provisions

Section

44-12-101. Definition of controlled substance.
44-12-102. Things subject to forfeiture.
44-12-103. When property may be seized.
44-12-104. Summary forfeiture of certain controlled substances.

Part 2 — Procedure

44-12-201. Petition to institute forfeiture proceedings — summons — service.
44-12-202. Answer to allegations concerning use of property.
44-12-203. Presumption — procedure following answer or expiration of time for answering.
44-12-204. Proof required or permitted at hearing.
44-12-205. Disposition of property following hearing.
44-12-206. Disposition of proceeds of sale.

Chapter Cross-References

Dangerous drugs, Title 45, ch. 9.
Search and seizure, Title 46, ch. 5.
Health and safety — controlled substances, Title 50, ch. 32.

Part 1

General Provisions

44-12-101. Definition of controlled substance. As used in this chapter, "controlled substance" means any substance designated as a dangerous drug pursuant to Title 50, chapter 32, parts 1 and 2.

History: En. Sec. 1, Ch. 529, L. 1979.

44-12-102. Things subject to forfeiture. (1) The following are subject to forfeiture:

(a) all controlled substances that have been manufactured, distributed, prepared, cultivated, compounded, processed, or possessed in violation of Title 45, chapter 9;

(b) all money, raw materials, products, and equipment of any kind that are used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting any controlled substance in violation of Title 45, chapter 9, except items used or intended for use in connection with quantities of marijuana in amounts less than 250 grams;

(c) except as provided in subsection (2)(d), all property that is used or intended for use as a container for anything enumerated in subsection (1)(a) or (1)(b);

(d) except as provided in subsection (2), all conveyances, including aircraft, vehicles, and vessels:

(i) which are used or intended for use in unlawfully transporting or in any manner facilitating the transportation of anything enumerated in subsection (1)(a) or (1)(b) for the purpose of sale or receipt of such thing;

(ii) in which a controlled substance is unlawfully kept, deposited, or concealed; or

(iii) in which a controlled substance is unlawfully possessed by an occupant;

(e) all books, records, and research products and materials, including formulas, microfilm, tapes, and data, that are used or intended for use in violation of Title 45, chapter 9;

(f) all drug paraphernalia as defined in 45-10-101; and

(g) everything of value furnished or intended to be furnished in exchange for a controlled substance in violation of Title 45, chapter 9; all proceeds traceable to such an exchange; and all money, negotiable instruments, and securities used or intended to be used to facilitate any violation of Title 45, chapter 9.

(2) (a) No conveyance used by a person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of Title 45, chapter 9.

(b) No conveyance is subject to forfeiture under this section because of any act or omission established by the owner of the conveyance to have been committed or omitted without his knowledge or consent.

(c) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to any violation of Title 45, chapter 9.

(d) No conveyance or container is subject to forfeiture under this section if it was used or intended for use in transporting less than 250 grams of marijuana.

History: En. Sec. 2, Ch. 529, L. 1979; amd. Sec. 8, Ch. 481, L. 1981; amd. Sec. 1, Ch. 180, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (1)(g).

1981 Amendment: Inserted subsection (1)(f).

44-12-103. When property may be seized. (1) A peace officer who has probable cause to make an arrest for a violation of Title 45, chapter 9, probable cause to believe that a conveyance has been used or is intended to be used to unlawfully transport a controlled substance, or probable cause to believe that a conveyance has been used to keep, deposit, or conceal a controlled substance shall seize the conveyance so used or intended to be used or any conveyance in which a controlled substance is unlawfully possessed by an occupant. He shall immediately deliver a conveyance that he seizes to the sheriff of the county in which the seizure is made, to be held as evidence until forfeiture is declared or release ordered.

(2) All property subject to forfeiture under 44-12-102 may be seized by a peace officer under a search warrant issued by a district court having jurisdiction over the property. Seizure without a warrant may be made if:

(a) the seizure is incident to an arrest or a search under a search warrant issued for another purpose or an inspection under an administrative inspection warrant;

(b) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal proceeding or a forfeiture proceeding based on this chapter;

(c) the peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) the peace officer has probable cause to believe that the property was used or is intended to be used in violation of Title 45, chapter 9, or in violation of Title 45, chapter 10, part 1.

History: En. Sec. 3, Ch. 529, L. 1979; amd. Sec. 9, Ch. 481, L. 1981.

Compiler's Comments

1981 Amendment: Added "or in violation of Title 45, chapter 10, part 1" to (2)(d).

44-12-104. Summary forfeiture of certain controlled substances. Controlled substances that are possessed, transferred, offered for transfer, manufactured, prepared, cultivated, compounded, or processed in violation of Title 45, chapter 9, and that are seized under the provisions of this chapter are contraband and shall be summarily forfeited to the state. Controlled substances which are seized or come into the possession of the state and the owners of which are unknown are contraband and shall be summarily forfeited to the state.

History: En. Sec. 4, Ch. 529, L. 1979.

Part 2

Procedure

44-12-201. Petition to institute forfeiture proceedings — summons — service. A peace officer or an officer of an agency that seizes any property other than controlled substances under the provisions of this chapter shall, within 45 days of the seizure, file a petition to institute forfeiture proceedings with the clerk of the district court of the county in which the seizure occurs. The clerk shall issue a summons at the request of the petitioning party, who shall cause the same to be served upon all owners or claimants of the property by one of the following methods:

(1) upon an owner or claimant whose name and address are known, by personal service of a copy of the petition and summons as provided in the Montana Rules of Civil Procedure;

(2) upon an owner or claimant whose address is unknown but who is believed to have an interest in the property, by publication of the summons in one issue of a newspaper of general circulation in the county where the seizure occurred or, if there is no such newspaper, by publication in one issue of a newspaper of general circulation in an adjoining county, and by mailing a copy of the petition and summons to the most recent address of such owner or claimant, if any, shown in the records of the department of justice.

History: En. Sec. 5, Ch. 529, L. 1979; amd. Sec. 1, Ch. 563, L. 1985.

Compiler's Comments

1985 Amendment: In introductory language, near beginning of first sentence, after "an officer of", substituted "an agency that" for "the seizing agency who", near middle of first sentence, after "file a", substituted "petition" for "notice of the seizure and intention", in second sentence, after "clerk shall", substituted "issue a summons at the request of the petitioning party, who shall cause the same to be served upon" for "serve notice thereof on", and made minor changes in punctuation and phraseology; deleted former (1) that read: "upon an owner or claimant whose right, title, or interest is of record in the division of motor vehicles, by mailing a copy of the notice by certified or registered mail to the address on the records of the division"; in (1) after "name and address are known", substituted present language of remainder of subsection for "by mailing a copy of the notice by certified or registered mail to his last-known address"; and in (2) near beginning, after "by publication", inserted "of the summons" and at end, after "adjoining county", inserted remainder of subsection.

Code Commissioner Correction: The Code Commissioner has substituted the department of justice for the division of motor vehicles in this section, because sec. 14, Ch. 503, L. 1985, repealed 2-15-2002, which had statutorily created the division, and sec. 1, Ch. 503 amended chapter 1 of Title 44, Law Enforcement, to substitute "department" for "division". The apparent intent was to eliminate the statutory status of the division, and therefore the Code Commissioner has changed statutory references accordingly (see 1-11-101(2)(g)).

44-12-202. Answer to allegations concerning use of property. Within 20 days after the service of the petition and summons or publication of the summons, as provided in 44-12-201, the owner or claimant of the seized property shall file a verified answer to the allegations concerning the use of the property described in the petition to institute forfeiture proceedings. No extension of the time for filing the answer may be granted, and failure to answer within 20 days bars the owner or claimant from presenting evidence at any subsequent evidentiary hearing unless extraordinary circumstances exist.

History: En. Sec. 6, Ch. 529, L. 1979; amd. Sec. 2, Ch. 563, L. 1985.

Compiler's Comments

1985 Amendment: At beginning of first sentence, after "Within 20 days after the", substituted "service of the petition and summons or publication of the summons, as provided in 44-12-201" for "mailing or publication of the notice"; and near end of first sentence, after "use of the property", substituted "described in the petition" for "contained in the notice of seizure and intention".

44-12-203. Presumption — procedure following answer or expiration of time for answering. (1) There is a rebuttable presumption of forfeiture as to all property listed in 44-12-102.

(2) If a verified answer to the petition is not filed within 20 days after the service of the petition and summons, the court upon motion must order the property forfeited to the state.

(3) If a verified answer is filed within 20 days, the forfeiture proceedings shall be set for hearing without a jury not less than 60 days after the answer is filed. Notice of the hearing shall be given in the manner provided for service of the petition and summons.

History: En. Sec. 7, Ch. 529, L. 1979; amd. Sec. 2, Ch. 180, L. 1983; amd. Sec. 3, Ch. 563, L. 1985.

Compiler's Comments

1985 Amendment: In (2), after "verified answer to the" substituted "petition" for "notice" and after "20 days after the" substituted "service of the petition and summons" for "mailing or publication of the notice"; and in (3), substituted "60 days" for "30 days" and at end substituted "the petition and summons" for "notice of seizure".

1983 Amendment: Inserted (1); in (2), after "the court" deleted "shall hear evidence on the charge of unlawful use of property and"; and after "motion" changed "may" to "must".

44-12-204. Proof required or permitted at hearing. In order to rebut the presumption of forfeiture:

(1) an owner of property who has a verified answer on file must prove that the property was not used for the purpose charged;

(2) an owner of property listed in 44-12-102(1)(g) who has a verified answer on file may prove in the alternative that the use of the property occurred without his knowledge or consent;

(3) a claimant of a security interest in the property who has a verified answer on file must prove that his security interest is bona fide and that it was created after a reasonable investigation of the moral responsibility, character, and reputation of the purchaser and without knowledge that the property was being or was to be used for the purpose charged. However, no person who has a lien dependent upon possession for compensation to which he is legally entitled for making repairs or performing labor upon, furnishing supplies or materials for, or providing storage, repair, or safekeeping of any property and no person doing business under any law of this state or the United States relating to financial institutions, as defined in 32-6-103, loan companies, or licensed pawnbrokers or regularly engaged in the business of selling the property or of purchasing conditional sales contracts for the property may be required to prove that his security interest was created after a reasonable investigation of the moral responsibility, character, and reputation of the owner, purchaser, or person in possession of the property when it was brought to such person.

History: En. Sec. 8, Ch. 529, L. 1979; amd. Sec. 3, Ch. 180, L. 1983.

Compiler's Comments

1983 Amendment: Substituted introduction and (1) and (2) for former (1), which read: "At the hearing any owner or claimant who has a verified answer on file may show by competent evidence that the property was not used for the purpose charged."; near beginning of (3), inserted "who has a verified answer on file" and changed "may prove" to "must prove".

44-12-205. Disposition of property following hearing. (1) If the court finds that the property was not used for the purpose charged or that the property listed in 44-12-102(1)(g) was used without the knowledge or consent of the owner, it shall order the property released to the owner of record as of the date of the seizure.

(2) If the court finds that the property was used for the purpose charged and that the property listed in 44-12-102(1)(g) was used with the knowledge or consent of the owner, the property shall be disposed of as follows:

(a) If proper proof of his claim is presented at the hearing by the holder of a security interest, the court shall order the property released to the holder of the security interest if the amount due him is equal to or in excess of the value of the property as of the date of seizure, it being the purpose of this chapter to forfeit only the right, title, or interest of the owner. If the amount due the holder of the security interest is less than the value of the property, the property must be sold at public auction by the sheriff of the county in which the seizure was made in the same manner provided by law for the sale of property under execution or the state may return the property to the holder of the security interest without proceeding with an auction.

(b) If no claimant exists and the confiscating agency wishes to retain the property for its official use, it may do so. If such property is not to be retained, it must be sold as provided in subsection (2)(a).

(c) If a claimant who has presented proper proof of his claim exists and the confiscating agency wishes to retain the property for its official use, it may do so provided it compensates the claimant in the amount of the security interest outstanding at the time of the seizure.

History: En. Sec. 9, Ch. 529, L. 1979; amd. Sec. 4, Ch. 180, L. 1983.

Compiler's Comments

1983 Amendment: In (1), inserted "or that the property listed in 44-12-102(1)(g) was used without the knowledge or consent of the owner"; and in (2), inserted "and that the property listed in 44-12-102(1)(g) was used with the knowledge or consent of the owner".

Cross-References

Property subject to execution, Title 25, ch. 13, part 5.

Property exempt from execution, Title 25, ch. 13, part 6.

Sale on execution, Title 25, ch. 13, part 7.

Validity of security agreement and rights of parties thereto, Title 30, ch. 9, part 2.

Alienability of debtor's rights — judicial process, 30-9-311.

44-12-206. Disposition of proceeds of sale. (1) Whenever property is seized, forfeited, and sold under the provisions of this chapter, the net proceeds of the sale must be distributed as follows:

(a) to the holders of security interests who have presented proper proof of their claims, if any, up to the amount of their interests in the property;

(b) the remainder, if any, to the county treasurer of the county in which the property was seized, who shall establish and maintain a drug forfeiture fund and deposit the remainder into the fund, except as provided in subsection (1)(c);

(c) if the property was seized within the corporate limits of a city or town by a law enforcement agency of that city or town, the remainder, if any, to the city or town treasurer, who shall establish and maintain a drug forfeiture fund and deposit the remainder into the fund.

(2) All proceeds from any source that are deposited into a drug forfeiture fund must in each fiscal year be appropriated to and remain available until expended by the confiscating agency for drug enforcement and education.

History: En. Sec. 10, Ch. 529, L. 1979; amd. Sec. 5, Ch. 180, L. 1983.

Compiler's Comments

1983 Amendment: In (1)(b), substituted "who shall establish and maintain a drug forfeiture fund and deposit the remainder into the fund" for "for deposit in the county general fund" and the same phrase for "for deposit in the city or town general fund" in (1)(c); and inserted (2).

Cross-References

Proceeds — secured party's rights on disposition of collateral, 30-9-306.

Priority of certain liens arising by operation of law, 30-9-310.

Priorities among conflicting security interests in the same collateral, 30-9-312.

CHAPTER 13

SPECIAL LAW ENFORCEMENT ASSISTANCE FUNDING

Part 1 — Special Law Enforcement Assistance Account

Section
44-13-101. Law enforcement assistance account created.
44-13-102. Federal forfeitures deposited in account.
44-13-103. Limitations on use of special law enforcement assistance account.

Part 1

Special Law Enforcement Assistance Account

44-13-101. Law enforcement assistance account created. There is an account in the federal special revenue fund defined in 17-2-102 to be known as the special law enforcement assistance account.

History: En. Sec. 1, Ch. 625, L. 1985.

44-13-102. Federal forfeitures deposited in account. Property and money forfeited under federal law and provided to the state by the federal government to support state and local law enforcement programs must be deposited to the special law enforcement assistance account established in 44-13-101.

History: **En. Sec. 2, Ch. 625, L. 1985.**

44-13-103. Limitations on use of special law enforcement assistance account. Money, property, and proceeds from property credited to the account may be used only for the following types of activities:

(1) payment of informants;

(2) use by undercover agents to purchase unlawful substances, including, without limitation, counterfeit or real controlled substances, pornographic materials, stolen property, or other contraband;

(3) use as gambling front money by undercover agents; and

(4) payment of overtime to state or local law enforcement officers when engaged in special investigations.

History: **En. Sec. 3, Ch. 625, L. 1985.**

TITLE 45

CRIMES

Ch.
1. General Preliminary Provisions.
2. General Principles of Liability.
3. Justifiable Use of Force.
4. Inchoate Offenses.
5. Offenses Against the Person.
6. Offenses Against Property.
7. Offenses Against Public Administration.
8. Offenses Against Public Order.
9. Dangerous Drugs.
10. Model Drug Paraphernalia Act.

CHAPTER 1

GENERAL PRELIMINARY PROVISIONS

Part 1 — Construction and Applicability

Section
45-1-101. Short title.
45-1-102. General purposes and principles of construction.
45-1-103. Application to offenses committed before and after enactment.
45-1-104. Other limitations on applicability.

Part 2 — Classification and Limitations

45-1-201. Classification of offenses.
45-1-202 through 45-1-204 reserved.
45-1-205. General time limitations.
45-1-206. Periods excluded from limitation.

Part 1

Construction and Applicability

45-1-101. Short title. This title shall be known and may be cited as the "Criminal Code of 1973".

History: En. 94-1-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-1-101.

45-1-102. General purposes and principles of construction. (1) The general purposes of the provisions governing the definition of offenses are:

(a) to forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens harm to individual or public interests;

(b) to safeguard conduct that is without fault from condemnation as criminal;

(c) to give fair warning of the nature of the conduct declared to constitute an offense;

(d) to differentiate on reasonable grounds between serious and minor offenses.

(2) The rule of the common law that penal statutes are to be strictly construed has no application to this code. All its provisions are to be construed according to the fair import of their terms with a view to effect its object and to promote justice.

History: En. 94-1-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-1-102.

Cross-References

Reasons for punishing offenders, Art. II, sec. 28, Mont. Const.

Criminal act and mental state, 45-2-103.

Criminal procedure purpose, 46-1-102.

Sentence and judgment, 46-18-101, 46-18-102.

45-1-103. Application to offenses committed before and after enactment. (1) The provisions of this code apply to any offense defined in this code and committed after January 1, 1974.

(2) Unless otherwise expressly provided or unless the context otherwise requires, the provisions of this title and Title 46 govern the construction of and punishment for any offense defined outside of this code and committed after January 1, 1974, as well as the construction and application of any defense to a prosecution for such an offense.

(3) The provisions of this code do not apply to any offense defined outside of this code and committed before January 1, 1974. Such an offense must be construed and punished according to the provisions of law existing at the time of the commission thereof in the same manner as if this code had not been enacted.

History: En. 94-1-103 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 7, Ch. 359, L. 1977; R.C.M. 1947, 94-1-103.

Cross-References

Other limitations as to applicability, 45-1-104.

Classification and limitations, 45-1-201 through 45-1-206.

Definitions and state of mind, 45-2-101 through 45-2-104.

Other factors affecting individual liability, 45-2-201 through 45-2-213.

Liability for acts committed by another, 45-2-301 through 45-2-312.

Justifiable use of force, 45-3-101 through 45-3-115.

45-1-104. Other limitations on applicability. (1) This code does not bar, suspend, or otherwise affect any right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered, and the civil injury is not merged into the offense.

(2) No conduct constitutes an offense unless it is described as an offense in this code or in another statute of this state. However, this provision does not affect the power of a court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order, civil judgment, or decree.

History: En. 94-1-104 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-1-104.

Cross-References

Sentence, 46-18-201 through 46-18-203.

Part 2

Classification and Limitations

45-1-201. Classification of offenses. (1) For the determination of the court's jurisdiction at the commencement of the action and for the determination of the commencement of the period of limitations, the offense shall be designated a felony or misdemeanor based upon the maximum potential sentence which could be imposed by statute.

(2) An offense defined by any statute of this state other than this code shall be classified as provided in this section, and the sentence that may be imposed upon conviction thereof shall be governed by this title and Title 46.

History: En. 94-1-105 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 8, Ch. 359, L. 1977; R.C.M. 1947, 94-1-105.

Cross-References

Application to offenses committed before and after enactment, 45-1-103.

Time limitations, 45-1-205, 45-1-206.

Definitions of "felony" and "misdemeanor", 45-2-101.

Deliberate homicide, 45-5-102.

Aggravated kidnapping, 45-5-303.

Burglary, 45-6-204.

Compounding a felony, 45-7-305.

When no penalty is specified, 46-18-211 through 46-18-213.

45-1-202 through 45-1-204 reserved.

45-1-205. General time limitations. (1) (a) A prosecution for criminal homicide may be commenced at any time.

(b) A prosecution under 45-5-502 through 45-5-505, 45-5-507, or 45-5-625 may be commenced within 5 years after the offense was committed if the victim was less than 16 years old at the time the offense occurred.

(2) Except as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must be commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The period prescribed in subsection (2) is extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after the termination thereof;

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not himself a party to the offense or, in the absence of such discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(4) The period prescribed in subsection (2) shall be extended in a prosecution for unlawful use of a computer, and prosecution shall be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not himself a party to the offense or, in the absence of such discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(5) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(6) A prosecution is commenced either when an indictment is found or an information or complaint is filed.

History: En. 94-1-106 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 9, Ch. 359, L. 1977; R.C.M. 1947, 94-1-106; amd. Sec. 4, Ch. 485, L. 1981; amd. Sec. 1, Ch. 227, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (1)(b).

1981 Amendment: Inserted subsection (4).

Cross-References

Classification of offenses, 45-1-201.

Definitions of "felony" and "misdemeanor", 45-2-101.
Homicide, 45-5-101 through 45-5-104.
Theft and related offenses, 45-6-301 through 45-6-327.
Methods of commencing prosecution, Title 46, ch. 11, part 1.
Filing of information, 46-11-201 through 46-11-204.
Guardians of incapacitated persons, 72-5-301 through 72-5-325.

45-1-206. Periods excluded from limitation. The period of limitation does not run during:

(1) any period in which the offender is not usually and publicly resident within this state or is beyond the jurisdiction of this state;

(2) any period in which the offender is a public officer and the offense charged is theft of public funds while in public office; or

(3) a prosecution pending against the offender for the same conduct, even if the indictment, complaint, or information which commences the prosecution is dismissed.

History: En. 94-1-107 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-1-107.

Cross-References
Rules for determining residence, 1-1-215.
General time limitations, 45-1-205.
Definition of "offense", 45-2-101.
Filing of information, 46-11-201 through 46-11-204.

CHAPTER 2

GENERAL PRINCIPLES OF LIABILITY

Part 1 — Definitions and State of Mind

Section

45-2-101. General definitions.
45-2-102. Substitutes for negligence and knowledge.
45-2-103. General requirements of criminal act and mental state.
45-2-104. Absolute liability.

Part 2 — Other Factors Affecting Individual Liability

45-2-201. Causal relationship between conduct and result.
45-2-202. Voluntary act.
45-2-203. Responsibility — intoxicated or drugged condition.
45-2-204 through 45-2-210 reserved.
45-2-211. Consent as a defense.
45-2-212. Compulsion.
45-2-213. Entrapment.

Part 3 — Liability for Acts Committed By or For Another

45-2-301. Accountability for conduct of another.
45-2-302. When accountability exists.
45-2-303. Separate conviction of person accountable.
45-2-304 through 45-2-310 reserved.
45-2-311. Criminal responsibility of corporations.
45-2-312. Accountability for conduct of corporation.

Part 1

Definitions and State of Mind

45-2-101. General definitions. Unless otherwise specified in the statute, all words will be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and where relevant, a failure or omission to take action.

(2) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons, as defined in this code, other than the offender.

(4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan which results in the repeated commission of the same offense or affects the same person or the same persons or the property thereof.

(8) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to such a device in a system or network.

(9) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

(10) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(11) "Computer services" include but are not limited to computer time, data processing, and storage functions.

(12) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(13) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

(14) "Conduct" means an act or series of acts and the accompanying mental state.

(15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(16) "Correctional institution" means the state prison, county or city jail, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

(17) "Deception" means knowingly to:

(a) create or confirm in another an impression which is false and which the offender does not believe to be true;

(b) fail to correct a false impression which the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance which the offender does not intend to perform or knows will not be performed. Failure to perform standing alone is not evidence that the offender did not intend to perform.

(18) "Defamatory matter" means anything which exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to his or its business or occupation.

(19) "Deprive" means to withhold property of another:

(a) permanently;

(b) for such a period as to appropriate a portion of its value;

(c) with the purpose to restore it only upon payment of reward or other compensation; or

(d) to dispose of the property and use or deal with the property so as to make it unlikely that the owner will recover it.

(20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

(21) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding 1 year.

(22) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

(23) A "frisk" is a search by an external patting of a person's clothing.

(24) "Government" includes any branch, subdivision, or agency of the government of the state or any locality within it.

(25) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any person or entity in whose welfare he is interested.

(26) A "house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(27) "Human being" means a person who has been born and is alive.

(28) An "illegal article" is an article or thing which is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(29) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(30) "Intoxicating substance" means any controlled substance as defined in Title 50, chapter 32, and any alcoholic beverage, including but not limited to any beverage containing ½ of 1% or more of alcohol by volume. The foregoing definition does not extend to dealcoholized wine or to any beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than ½ of 1% of alcohol by volume.

(31) An "involuntary act" means any act which is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(32) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

(33) "Knowingly"—a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware of his conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when he is aware that it is highly probable that such result will be caused by his conduct. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

(34) "Mentally defective" means that a person suffers from a mental disease or defect which renders him incapable of appreciating the nature of his conduct.

(35) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling his conduct as a result of the influence of an intoxicating substance.

(36) "Misdemeanor" means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term or a fine, or both, or the sentence imposed is imprisonment in the state prison for any term of 1 year or less.

(37) "Negligently"—a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when he consciously disregards a risk that the result will occur or that the circumstance exists or when he disregards a risk of which he should be aware that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of

ordinary care. Relevant terms such as "negligent" and "with negligence" have the same meaning.

(38) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance thereof.

(39) "Obtains or exerts control" includes but is not limited to the taking, carrying away, or sale, conveyance, or transfer of title to, interest in, or possession of property.

(40) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

(41) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(42) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

(43) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(44) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with such proceeding.

(45) "Other state" means any state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(46) "Owner" means a person other than the offender who has possession of or any other interest in the property involved, even though such interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(47) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

(48) "Peace officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.

(49) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(50) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of any government or subdivision thereof.

(51) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(52) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(53) "Premises" includes any type of structure or building and any real property.

(54) "Property" means any tangible or intangible thing of value. Property includes but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;

(e) written instruments which represent or embody rights concerning anything of value, including labor or services, or which are otherwise of value to the owner;

(f) things growing on, affixed to, or found on land and things which are part of or affixed to any building;

(g) electricity, gas, and water;

(h) birds, animals, and fish which ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

(j) any other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof which constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and

(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine- or human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and any copies thereof.

(55) "Property of another" means real or personal property in which a person other than the offender has an interest which the offender has no authority to defeat or impair, even though the offender himself may have an interest in the property.

(56) "Public place" means any place to which the public or any substantial group thereof has access.

(57) "Public servant" means any officer or employee of government, including but not limited to legislators, judges, and firefighters, and any person participating as a juror, advisor, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The term "public servant" includes one who has been elected or designated to become a public servant.

(58) "Purposely"—a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is his conscious object

to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms such as "purpose" and "with the purpose" have the same meaning.

(59) "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ. It includes serious mental illness or impairment.

(60) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

(61) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(62) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(63) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above such land and water.

(64) "Statute" means any act of the legislature of this state.

(65) "Stolen property" means property over which control has been obtained by theft.

(66) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in his presence.

(67) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(68) "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit any criminal offense;

(d) accuse any person of a criminal offense;

(e) expose any person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of any person;

(g) reveal any information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause such action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the property is not demanded or received for the benefit of the groups which he purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(69) (a) "Value" means the market value of the property at the time and place of the crime or, if such cannot be satisfactorily ascertained, the cost of

the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value shall be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be considered the amount due or collectible thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(ii) The value of any other instrument which creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be considered the amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network shall be considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of such economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than $300 by the standards set forth in subsection (69)(a) above, its value shall be considered to be an amount less than $300.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(70) "Vehicle" means any device for transportation by land, water, or air or mobile equipment with provision for transport of an operator.

(71) "Weapon" means any instrument, article, or substance which, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(72) "Witness" means a person whose testimony is desired in any official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding.

History: En. 94-2-101 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 190, L. 1975; amd. Sec. 1, Ch. 405, L. 1975; amd. Sec. 1, Ch. 443, L. 1975; amd. Sec. 10, Ch. 359, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 94-2-101; amd. Sec. 1, Ch. 10, L. 1979; amd. Sec. 1, Ch. 485, L. 1981; amd. Sec. 15, Ch. 3, L. 1985.

Compiler's Comments

1985 Amendment: In (69)(b) increased maximum presumed value of stolen property from $150 to $300 in two places.

1981 Amendment: Inserted subsections (8) through (13); substituted "any tangible or intangible thing" for "anything" in (54); inserted subsection (54)(k); inserted subsection (69)(a)(iii); corrected internal references changed due to added subsections.

Cross-References

Acts

Definition of "conduct", 45-2-101.

General requirements of criminal act and mental state, 45-2-103.

Voluntary act, 45-2-202.

Theft, 45-6-301.

Official misconduct, 45-7-401.

Administrative Proceeding

Local Government, Title 7.

Another

Accountability for conduct of another, 45-2-301.

Benefit

Definition of "pecuniary benefit", 45-2-101.

Bribery in official and political matters, 45-7-101.

Gifts to public servants by persons subject to their jurisdiction, 45-7-104.

Bodily Injury

Definition of "serious bodily injury", 45-2-101.

Justifiable use of force, 45-3-101 through 45-3-115.
Assault, 45-5-201, 45-5-202.
Intimidation, 45-5-203.
Robbery, 45-5-401.
Sexual intercourse without consent, 45-5-503.
Criminal mischief and arson, 45-6-101 through 45-6-103.

Cohabit
Incest, 45-5-507.

Common Scheme
Issuing a bad check, 45-6-316.
Forgery, 45-6-325.

Conduct
Definition of "acts", 45-2-101.
Substitutes for negligence and knowledge, 45-2-102.
Responsibility — intoxicated or drugged condition, 45-2-203.
Liability for acts committed by or for another, 45-2-301 through 45-2-312.
Assault, 45-5-201.
Effect of multiple charges and former prosecutions, 46-11-501 through 46-11-505.

Conviction
Definition of "conviction", 46-1-201.
Waiver of counsel, 46-8-102.
Imposition of sentence, 46-18-201 through 46-18-203.
Postconviction hearing, Title 46, ch. 21.

Dangerous Drugs
Definitions, 45-9-111.

Deception
Definition of "knowingly", 45-2-101.
Theft, 45-6-301.
Deceptive practices, 45-6-317, 45-6-318.

Defamatory Matter
Criminal defamation, 45-8-212.

Deprive
Theft and related offenses, 45-6-301 through 45-6-308.

Deviate Sexual Relations
Deviate sexual conduct, 45-5-505.

Felony
Provisions of this code to be liberally construed, 45-1-102.
Classifications and limitations, 45-1-201 through 45-1-206.
Definition of "misdemeanor", 45-2-101.
Deliberate homicide, 45-5-102.
Sexual intercourse without consent, 45-5-503.
Burglary, 45-6-204.
Compounding a felony, 45-7-305.
When no penalty is specified, 46-18-213.

Food Stamp or Coupon
"Food stamp or coupon" defined, 45-6-312.

Forcible Felony
Justifiable use of force — definition, 45-3-101.
Use of force by aggressor, 45-3-105.

Frisk
Stop and frisk, 46-5-401, 46-5-402.

Government
Offenses against public administration, Title 45, ch. 7.

Harm
Bribery in official and political matters, 45-7-101.
Threats and other improper influence in official and political matters, 45-7-102.

House of Prostitution
Promoting prostitution, 45-5-602.
Aggravated promotion of prostitution, 45-5-603.
Evidence in cases of promotion, 45-5-604.

Human Being
Offenses against the person, Title 45, ch. 5.

Illegal Article
Transferring illegal articles or unauthorized communication, 45-7-307.

Inmate
Promoting prostitution, 45-5-602.
Aggravated promotion of prostitution, 45-5-603.
Evidence in cases of promotion, 45-5-604.

Intoxicating Substance
Provisions generally applicable to sexual crimes, 45-5-511.
Unlawful transactions with children, 45-5-623.
Unlawful possession of an intoxicating substance by children, 45-5-624.

Involuntary Act
General requirements of criminal act and mental state, 45-2-103.
Absolute liability, 45-2-104.
Voluntary act, 45-2-202.

Juror
Definition of "public servant", 45-2-101.
Bribery in official and political matters, 45-7-101.
Threats or other improper influence in official and political matters, 45-7-102.

Knowingly
Definition of "purposely", 45-2-101.
General requirements of criminal act and mental state, 45-2-103.

Mentally Defective
Definition of "knowingly", 45-2-101.
Definition of "purposely", 45-2-101.
General requirements of criminal act and mental state, 45-2-103.
Consent as a defense, 45-2-211.
Sexual intercourse without consent, 45-5-503.
Mental competency of accused, Title 46, ch. 14.

Mentally Incapacitated
General requirements of criminal act and mental state, 45-2-103.
Responsibility — intoxicated or drugged condition, 45-2-203.
Consent as a defense, 45-2-211.
Sexual intercourse without consent, 45-5-503.

Misdemeanor
Application of code to offenses committed before and after enactment, 45-1-103.
Classification of offenses, 45-1-201.
General time limitations, 45-1-205.
Definition of "felony", 45-2-101.
Official misconduct, 45-7-401.
Violation of 61-8-304 not a misdemeanor, 61-8-718.

Negligently
Definition of "knowingly", 45-2-101.
Definition of "purposely", 45-2-101.
Causal relationship between conduct and result, 45-2-201.
Negligent homicide, 45-5-104.
Assault, 45-5-201.
Negligent arson, 45-6-102.

Obtain
Theft and related offenses, 45-6-301 through 45-6-327.

Obtains or Exerts Control
Definition of "obtain", 45-2-101.
Theft and related offenses, 45-6-301 through 45-6-327.

Occupied Structure
Definition of "premises", 45-2-101.
Definition of "vehicle", 45-2-101.
Criminal mischief and arson, 45-6-101 through 45-6-103.
Criminal trespass and burglary, 45-6-201 through 45-6-205.

Offense
Other limitations on applicability of code, 45-1-104.
Classification of offenses, 45-1-201.
Definition of "felony", 45-2-101.
Definition of "misdemeanor", 45-2-101.

Official Detention
Escape, 45-7-306.

Official Proceeding
Perjury, 45-7-201.

Other State
Definition of "state" or "this state", 45-2-101.

Owner
Theft and related offenses, 45-6-301 through 45-6-327.

Party Official
Bribery in official and political matters, 45-7-101.
Threats and other improper influence in official and political matters, 45-7-102.

Peace Officer
Use of force to prevent escape, 45-3-106.
Use of force in resisting arrest, 45-3-108.
Resisting arrest, 45-7-301.
Obstructing a peace officer or other public servant, 45-7-302.
Failure to aid a peace officer, 45-7-304.
Escape, 45-7-306.
Search and seizure, Title 46, ch. 5.
Arrest by a peace officer, 46-6-401 through 46-6-411.

Pecuniary Benefit
Definition of "benefit", 45-2-101.
Bribery and corrupt influence, 45-7-101 through 45-7-104.

Physically Helpless
Definition of "mentally defective", 45-2-101.
Definition of "mentally incapacitated", 45-2-101.
Consent as a defense, 45-2-211.
Sexual crimes, Title 45, ch. 5, part 5.

Possession
Definition of "obtain", 45-2-101.
Definition of "obtains or exerts control", 45-2-101.
Possession of burglary tools, 45-6-205.
Theft, 45-6-301.
Illegal branding or altering or obscuring a brand, 45-6-327.

Premises
Definition of "occupied structure", 45-2-101.
Definition of "vehicle", 45-2-101.
Criminal mischief and arson, 45-6-101 through 45-6-103.
Criminal trespass and burglary, 45-6-201 through 45-6-205.

Property
Terms relating to instruments and other writings, 1-1-203.

Property of Another
Definition of "property", 45-2-101.
Theft and related offenses, 45-6-301 through 45-6-327.

Public Place
Prostitution and related offenses, 45-5-601 through 45-6-604.
Conduct disruptive of public order, 45-8-101 through 45-8-114.

Public Servant
Definition of "juror", 45-2-101.
Offenses against public administration, Title 45, ch. 7.
Definition of "judge", 46-1-201.

Purposely
Definition of "knowingly", 45-2-101.
Definition of "negligently", 45-2-101.
General requirements of criminal act and mental state, 45-2-103.

Security Interest
Defined, 45-6-315.

Serious Bodily Injury
Definition of "bodily injury", 45-2-101.
Assault, 45-5-201.
Aggravated kidnapping — lesser sentence where release of victim and no serious bodily injury, 45-5-303.

Sexual Contact
Sexual assault, 45-5-502.

Sexual Intercourse
Definition of "sexual contact", 45-2-101.

Sexual crimes, Title 45, ch. 5, part 5.

State

Definition of "other state", 45-2-101.

Jurisdiction, Title 46, ch. 2.

Stolen Property

Definition of "obtains or exerts control", 45-2-101.

Robbery, 45-5-401.

Criminal trespass and burglary, 45-6-201 through 45-6-205.

Theft and related offenses, 45-6-301 through 45-6-327.

Stop

Definition of "frisk", 45-2-101.

Stop and frisk, 46-5-401, 46-5-402.

Arrest, Title 46, ch. 6.

Tamper

Criminal mischief and arson, 45-6-101 through 45-6-103.

Criminal trespass, 45-6-201 through 45-6-203.

Threat

Attempt, 45-4-103.

Intimidation, 45-5-203.

Theft, 45-6-301.

Threats and other improper influence in official and political matters, 45-7-102.

Value

Definition of "common scheme", 45-2-101.

Criminal mischief, 45-6-101.

Theft and related offenses, 45-6-301 through 45-6-327.

Vehicle

Definition of "premises", 45-2-101.

Definition of "property", 45-2-101.

Criminal trespass and burglary, 45-6-201 through 45-6-205.

Theft and related offenses, 45-6-301 through 45-6-327.

Weapon

Definition of "bodily injury", 45-2-101.

Definition of "serious bodily injury", 45-2-101.

Assault, 45-5-201 through 45-5-204.

Concealed weapons, 45-8-316 through 45-8-331.

Witness

Definition of "official proceeding", 45-2-101.

Tampering with witnesses and informants, 45-7-206.

Summoning witnesses to testify, 46-15-112 through 46-15-114.

45-2-102. Substitutes for negligence and knowledge. When the law provides that negligence suffices to establish an element of an offense, such element also is established if a person acts purposely or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts purposely.

History: En. 94-2-110 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-110.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "negligently", 45-2-101.

Definition of "purposely", 45-2-101.

General requirements of criminal act and mental state, 45-2-103.

45-2-103. General requirements of criminal act and mental state. (1) A person is not guilty of an offense, other than an offense which involves absolute liability, unless, with respect to each element described by the statute defining the offense, he acts while having one of the mental states described in subsections (33), (37), and (58) of 45-2-101. The existence of a mental state may be inferred from the acts of the accused and the facts and circumstances connected with the offense.

(2) If the statute defining an offense prescribes a particular mental state with respect to the offense as a whole without distinguishing among the elements thereof, the prescribed mental state applies to each such element.

(3) Knowledge that certain conduct constitutes an offense or knowledge of the existence, meaning, or application of the statute defining an offense is not an element of the offense unless the statute clearly defines it as such.

(4) A person's reasonable belief that his conduct does not constitute an offense is a defense if:

(a) the offense is defined by an administrative regulation or order which is not known to him and has not been published or otherwise made reasonably available to him and he could not have acquired such knowledge by the exercise of due diligence pursuant to facts known to him;

(b) he acts in reliance upon a statute which later is determined to be invalid;

(c) he acts in reliance upon an order or opinion of the Montana supreme court or a United States appellate court later overruled or reversed; or

(d) he acts in reliance upon an official interpretation of the statute, regulation, or order defining the offense made by a public officer or agency legally authorized to interpret such statute.

(5) If a person's reasonable belief is a defense under subsection (4), nevertheless he may be convicted of an included offense of which he would be guilty if the law were as he believed it to be.

(6) Any defense based upon this section is an affirmative defense.

History: En. 94-2-103 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 11, Ch. 359, L. 1977; R.C.M. 1947, 94-2-103; amd. Sec. 1, Ch. 580, L. 1979; amd. Sec. 5, Ch. 485, L. 1981.

Compiler's Comments

1981 Amendment: Changed internal references to subsections in 45-2-101 to reflect amendment of that section in (1).

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Definition of "knowingly", 45-2-101.

Definition of "negligently", 45-2-101.

Definition of "purposely", 45-2-101.

Absolute liability, 45-2-104.

Inference of mental state in deliberate homicide, 45-5-112.

45-2-104. Absolute liability. A person may be guilty of an offense without having, as to each element thereof, one of the mental states described in subsections (33), (37), and (58) of 45-2-101 only if the offense is punishable by a fine not exceeding $500 and the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described.

History: En. 94-2-104 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 12, Ch. 359, L. 1977; R.C.M. 1947, 94-2-104; amd. Sec. 6, Ch. 485, L. 1981.

Compiler's Comments

1981 Amendment: Changed internal references to subsections in 45-2-101 to reflect amendment of that section.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "negligently", 45-2-101.

Definition of "purposely", 45-2-101.

General requirements of criminal act and mental state, 45-2-103.

Voluntary act, 45-2-202.

Part 2

Other Factors Affecting Individual Liability

45-2-201. Causal relationship between conduct and result. (1) Conduct is the cause of a result if:

(a) without the conduct the result would not have occurred; and

(b) any additional causal requirements imposed by the specific statute defining the offense are satisfied.

(2) If purposely or knowingly causing a result is an element of an offense and the result is not within the contemplation or purpose of the offender, either element can nevertheless be established if:

(a) the result differs from that contemplated only in the respect that a different person or different property is affected or that the injury or harm caused is less than contemplated; or

(b) the result involves the same kind of harm or injury as contemplated but the precise harm or injury was different or occurred in a different way, unless the actual result is too remote or accidental to have a bearing on the offender's liability or on the gravity of the offense.

(3) If negligently causing a particular result is an element of an offense and the result is not within the risk of which the offender is aware or should be aware, either element can nevertheless be established if:

(a) the actual result differs from the probable result only in the respect that a different person or different property is affected or that the actual injury or harm is less; or

(b) the actual result involves the same kind of injury or harm as the probable result, unless the actual result is too remote or accidental to have a bearing on the offender's liability or on the gravity of the offense.

History: En. 94-2-105 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-105.

Cross-References

Definition of "conduct", 45-2-101.
Definition of "knowingly", 45-2-101.
Definition of "negligently", 45-2-101.
Definition of "purposely", 45-2-101.

45-2-202. Voluntary act. A material element of every offense is a voluntary act, which includes an omission to perform a duty which the law imposes on the offender and which he is physically capable of performing. Possession is a voluntary act if the offender knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient time to have been able to terminate his control.

History: En. 94-2-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-102.

Cross-References

Definition of "act", 45-2-101.
Definition of "conduct", 45-2-101.
Definition of "involuntary act", 45-2-101.
Definition of "possession", 45-2-101.
Absolute liability, 45-2-104.

45-2-203. Responsibility — intoxicated or drugged condition. A person who is in an intoxicated or drugged condition is criminally responsible for conduct unless such condition is involuntarily produced and deprives him of his capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law. An intoxicated or drugged condition may be taken into consideration in determining the existence of a mental state which is an element of the offense.

History: En. 94-2-109 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 53, Ch. 329, L. 1974; R.C.M. 1947, 94-2-109.

Cross-References

Definition of "intoxicating substance", 45-2-101.
Robbery, 45-5-401.
Mental competency of accused, Title 46, ch. 14.

45-2-204 through 45-2-210 reserved.

45-2-211. Consent as a defense. (1) The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense.

(2) Consent is ineffective if:

(a) it is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense;

(b) it is given by a person who by reason of youth, mental disease or defect, or intoxication is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense;

(c) it is induced by force, duress, or deception; or

(d) it is against public policy to permit the conduct or the resulting harm, even though consented to.

History: En. 94-2-111 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 13, Ch. 359, L. 1977; R.C.M. 1947, 94-2-111.

Cross-References

Sexual crimes, Title 45, ch. 5, part 5.

45-2-212. Compulsion. A person is not guilty of an offense, other than an offense punishable with death, by reason of conduct which he performs under the compulsion of threat or menace of the imminent infliction of death or serious bodily harm if he reasonably believes that death or serious bodily harm will be inflicted upon him if he does not perform such conduct.

History: En. 94-3-110 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-110.

45-2-213. Entrapment. A person is not guilty of an offense if his conduct is incited or induced by a public servant or his agent for the purpose of obtaining evidence for the prosecution of such person. However, this section is inapplicable if a public servant or his agent merely affords to such person the opportunity or facility for committing an offense in furtherance of criminal purpose which such person has originated.

History: En. 94-3-111 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-111.

Part 3

Liability for Acts Committed By or For Another

45-2-301. Accountability for conduct of another. A person is responsible for conduct which is an element of an offense if the conduct is either that of the person himself or that of another and he is legally accountable for such conduct as provided in 45-2-302, or both.

History: En. 94-2-106 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-106.

Cross-References

Definition of "conduct", 45-2-101.

When accountability exists, 45-2-302.

Testimony of person legally accountable, 46-16-213.

45-2-302. When accountability exists. A person is legally accountable for the conduct of another when:

(1) having a mental state described by the statute defining the offense, he causes another to perform the conduct, regardless of the legal capacity or mental state of the other person;

(2) the statute defining the offense makes him so accountable; or

(3) either before or during the commission of an offense with the purpose to promote or facilitate such commission, he solicits, aids, abets, agrees, or attempts to aid such other person in the planning or commission of the offense. However, a person is not so accountable if:

(a) he is a victim of the offense committed, unless the statute defining the offense provides otherwise; or

(b) before the commission of the offense, he terminates his effort to promote or facilitate such commission and does one of the following:

(i) wholly deprives his prior efforts of effectiveness in such commission;

(ii) gives timely warning to the proper law enforcement authorities; or

(iii) otherwise makes proper effort to prevent the commission of the offense.

History: En. 94-2-107 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-107.

Cross-References

Definition of "conduct", 45-2-101.

Accountability for conduct of another, 45-2-301.

Inchoate offenses, 45-4-101 through 45-4-103.

45-2-303. Separate conviction of person accountable. A person who is legally accountable for the conduct of another which is an element of an offense may be convicted upon proof that the offense was committed and that he was so accountable although the other person claimed to have committed the offense has not been prosecuted or convicted, has been convicted of a different offense, is not amenable to justice, or has been acquitted.

History: En. 94-2-108 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-108.

Cross-References

Definition of "conduct", 45-2-101.

Accountability for conduct of another, 45-2-301.

When accountability exists, 45-2-302.

45-2-304 through 45-2-310 reserved.

45-2-311. Criminal responsibility of corporations. (1) A corporation may be prosecuted for the commission of an offense if, but only if:

(a) the offense is a misdemeanor and is defined by 45-5-204, 45-6-315, 45-6-317, 45-6-318, 45-6-326, 45-6-327, 45-8-113, 45-8-114, 45-8-212, 45-8-214, 82-1-201, or 82-10-104 or by another statute which clearly indicates a legislative purpose to impose liability on a corporation and an agent of the corporation performs the conduct which is an element of the offense while acting within the scope of his office or employment and in behalf of the corporation, except that any limitation in the defining statute concerning the corporation's accountability for certain agents or under certain circumstances is applicable; or

(b) the commission of the offense is authorized, requested, commanded, or performed by the board of directors or by a high managerial agent who is acting within the scope of his employment in behalf of the corporation.

(2) A corporation's proof that the high managerial agent having supervisory responsibility over the conduct which is the subject matter of the offense exercised due diligence to prevent the commission of the offense is a defense to a prosecution for any offense to which subsection (1)(a) refers, other than an offense for which absolute liability is imposed. This subsection is inapplicable if the legislative purpose of the statute defining the offense is inconsistent with the provisions of this subsection.

(3) For the purposes of this section:

(a) "agent" means any director, officer, servant, employee, or other person who is authorized to act in behalf of the corporation;

(b) "high managerial agent" means an officer of the corporation or any other agent who has a position of comparable authority for the formulation of corporate policy or the supervision of subordinate employees in a managerial capacity.

History: En. 94-2-112 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-112; amd. Sec. 2, Ch. 582, L. 1983; amd. Sec. 2, Ch. 365, L. 1985.

Compiler's Comments

1985 Amendment: In (1)(a) inserted "82-1-201" in list of citations.

1983 Amendment: In (1)(a), after "45-8-214," inserted "or 82-10-104".

Cross-References
Definition of "conduct", 45-2-101.
Accountability for conduct of corporation, 45-2-312.
Summons to a corporation, 46-6-304.

45-2-312. Accountability for conduct of corporation. (1) A person is legally accountable for conduct which is an element of an offense and which, in the name or in behalf of a corporation, he performs or causes to be performed to the same extent as if the conduct were performed in his own name or behalf.

(2) An individual who has been convicted of an offense by reason of his legal accountability for the conduct of a corporation is subject to the punishment authorized by law for an individual upon conviction of such offense although only a lesser or different punishment is authorized for the corporation.

History: En. 94-2-113 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-113.

Cross-References
Definition of "conduct", 45-2-101.
Criminal responsibility of corporations, 45-2-311.

CHAPTER 3

JUSTIFIABLE USE OF FORCE

Part 1 — When Force Justified

Section
45-3-101. Definitions.
45-3-102. Use of force in defense of person.
45-3-103. Use of force in defense of occupied structure.
45-3-104. Use of force in defense of other property.
45-3-105. Use of force by aggressor.
45-3-106. Use of force to prevent escape.
45-3-107. Use of force by parent, guardian, or teacher.
45-3-108. Use of force in resisting arrest.
45-3-109. Execution of death sentence.
45-3-110 through 45-3-114 reserved.
45-3-115. Affirmative defense.

Part 1

When Force Justified

Part Cross-References
Right to use force, 49-1-103.

45-3-101. Definitions. (1) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

(2) "Force likely to cause death or serious bodily harm" within the meaning of this chapter includes but is not limited to:

(a) the firing of a firearm in the direction of a person, even though no purpose exists to kill or inflict serious bodily harm; and

(b) the firing of a firearm at a vehicle in which a person is riding.

History: En. 94-3-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-101.

Cross-References

Definition of "forcible felony", 45-2-101.

Justifiable use of force, Title 45, ch. 3.

45-3-102. Use of force in defense of person. A person is justified in the use of force or threat to use force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force likely to cause death or serious bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or serious bodily harm to himself or another or to prevent the commission of a forcible felony.

History: En. 94-3-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-102.

Cross-References

Definitions of "forcible felony" and of "force likely to cause death or serious bodily harm", 45-3-101.

45-3-103. Use of force in defense of occupied structure. A person is justified in the use of force or threat to use force against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's unlawful entry into or attack upon an occupied structure. However, he is justified in the use of force likely to cause death or serious bodily harm only if:

(1) the entry is made or attempted in violent, riotous, or tumultuous manner and he reasonably believes that such force is necessary to prevent an assault upon or offer of personal violence to him or another then in the occupied structure; or

(2) he reasonably believes that such force is necessary to prevent the commission of a forcible felony in the occupied structure.

History: En. 94-3-103 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-103.

Cross-References

Definition of "conduct", 45-2-101.

Definition of "occupied structure", 45-2-101.

Definition of "enter or remain unlawfully", 45-6-201.

Criminal trespass to property, 45-6-203.

45-3-104. Use of force in defense of other property. A person is justified in the use of force or threat to use force against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's trespass on or other tortious or criminal interference with either real property (other than an occupied structure) or personal property lawfully in his possession or in the possession of another who is a member of his immediate family or household or of a person whose property he has a legal duty to protect. However, he is justified in the use of force likely to cause death or serious bodily harm only if he reasonably believes that such force is necessary to prevent the commission of a forcible felony.

History: En. 94-3-104 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-104.

Cross-References

Definition of "forcible felony", 45-2-101, 45-3-101.

Use of force in defense of person, 45-3-102.

Use of force in defense of occupied structure, 45-3-103.

Definition of "enter or remain unlawfully", 45-6-201.

Criminal trespass to property, 45-6-203.

Arrest by a private person, 46-6-501 through 46-6-504.

45-3-105. Use of force by aggressor. The justification described in 45-3-102 through 45-3-104 is not available to a person who:

(1) is attempting to commit, committing, or escaping after the commission of a forcible felony; or

(2) purposely or knowingly provokes the use of force against himself, unless:

(a) such force is so great that he reasonably believes that he is in imminent danger of death or serious bodily harm and that he has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or serious bodily harm to the assailant; or

(b) in good faith, he withdraws from physical contact with the assailant and indicates clearly to the assailant that he desires to withdraw and terminate the use of force but the assailant continues or resumes the use of force.

History: En. 94-3-105 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-105.

Cross-References

Definition of "forcible felony", 45-2-101, 45-3-101.

Definition of "force likely to cause death or serious bodily harm", 45-3-101.

45-3-106. Use of force to prevent escape. (1) A peace officer or other person who has an arrested person in his custody is justified in the use of such force to prevent the escape of the arrested person from custody as he would be justified in using if he were arresting such person.

(2) A guard or other peace officer is justified in the use of force, including force likely to cause death or serious bodily harm, which he reasonably believes to be necessary to prevent the escape from a correctional institution of a person whom the officer reasonably believes to be lawfully detained in such institution under sentence for an offense or awaiting trial or commitment for an offense.

History: En. 94-3-106 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-106.

Cross-References

Definition of "correctional institution", 45-2-101.

Resisting arrest, 45-7-301.

Escape, 45-7-306.

Stop and frisk, 46-5-401, 46-5-402.

Method of arrest, 46-6-104.

45-3-107. Use of force by parent, guardian, or teacher. A parent or an authorized agent of any parent or a guardian, master, or teacher is justified in the use of such force as is reasonable and necessary to restrain or correct his child, ward, apprentice, or pupil.

History: En. 94-3-107 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-107.

Cross-References

Homicide, 45-5-101 through 45-5-105.

Assault, 45-5-201 through 45-5-204.

45-3-108. Use of force in resisting arrest. A person is not authorized to use force to resist an arrest which he knows is being made either by a peace officer or by a private person summoned and directed by a peace officer to make the arrest, even if he believes that the arrest is unlawful and the arrest in fact is unlawful.

History: En. 94-3-108 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-108.

Cross-References

Use of force in defense of person, 45-3-102.

Resisting arrest, 45-7-301.

Method of arrest, 46-6-104.

Manner of arrest without a warrant, 46-6-106.

45-3-109. Execution of death sentence. A person who puts a person to death pursuant to a sentence of a court of competent jurisdiction is justified if he acts in accordance with the sentence pronounced and the law prescribing the procedure for execution of a death sentence.

History: En. 94-3-109 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-109; amd. Sec. 3, Ch. 411, L. 1983.

Compiler's Comments

1983 Amendment — Applicability: Near beginning of section, changed "public servant who in the exercise of his official duty" to "person who".

Section 7, Ch. 411, L. 1983, provided: "This act applies to death sentences whether first pronounced before or after its effective date. The legislature intends this act to apply retroactively under 1-2-109." Effective on passage and approval, April 7, 1983.

Cross-References

Death penalty, 46-18-301 through 46-18-310.
Execution of death, 46-19-103.

45-3-110 through 45-3-114 reserved.

45-3-115. Affirmative defense. A defense of justifiable use of force based on the provisions of this part is an affirmative defense.

History: En. 94-3-112 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-112.

Cross-References

Defendant presumed innocent — reasonable doubt, 46-16-601.

CHAPTER 4

INCHOATE OFFENSES

Part 1 — Enumeration of Offenses and Extent of Liability

Section
45-4-101. Solicitation.
45-4-102. Conspiracy.
45-4-103. Attempt.

Part 1

Enumeration of Offenses and Extent of Liability

45-4-101. Solicitation. (1) A person commits the offense of solicitation when, with the purpose that an offense be committed, he commands, encourages, or facilitates the commission of that offense.

(2) A person convicted of solicitation shall be punished not to exceed the maximum provided for the offense solicited.

History: En. 94-4-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-4-101.

Cross-References

Definition of "offense", 45-2-101.
Definition of "purpose", 45-2-101.

45-4-102. Conspiracy. (1) A person commits the offense of conspiracy when, with the purpose that an offense be committed, he agrees with another to the commission of that offense. No person may be convicted of conspiracy to commit an offense unless an act in furtherance of such agreement has been committed by him or by a coconspirator.

(2) It shall not be a defense to conspiracy that the person or persons with whom the accused has conspired:

(a) has not been prosecuted or convicted;
(b) has been convicted of a different offense;
(c) is not amenable to justice;
(d) has been acquitted; or
(e) lacked the capacity to commit the offense.

(3) A person convicted of the offense of conspiracy shall be punished not to exceed the maximum sentence provided for the offense which is the object of the conspiracy.

History: En. 94-4-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-4-102.

Cross-References

Admissibility of statements of coconspirator, Rule 801(d)(2)(E), Montana Rules of Evidence (see Title 26, ch. 10).

Definition of "acts", 45-2-101.

Definition of "offense", 45-2-101.

Definition of "purpose", 45-2-101.

Liability for acts committed by or for another, 45-2-301 through 45-2-312.

45-4-103. Attempt. (1) A person commits the offense of attempt when, with the purpose to commit a specific offense, he does any act toward the commission of such offense.

(2) It shall not be a defense to a charge of attempt that because of a misapprehension of the circumstances it would have been impossible for the accused to commit the offense attempted.

(3) A person convicted of the offense of attempt shall be punished not to exceed the maximum provided for the offense attempted.

(4) A person shall not be liable under this section if, under circumstances manifesting a voluntary and complete renunciation of his criminal purpose, he avoided the commission of the offense attempted by abandoning his criminal effort.

(5) Proof of the completed offense does not bar conviction for the attempt.

History: En. 94-4-103 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-4-103.

Cross-References

Definition of "offense", 45-2-101.

Definition of "purpose", 45-2-101.

CHAPTER 5

OFFENSES AGAINST THE PERSON

Part 1 — Homicide

Section

45-5-101. Criminal homicide.
45-5-102. Deliberate homicide.
45-5-103. Mitigated deliberate homicide.
45-5-104. Negligent homicide.
45-5-105. Aiding or soliciting suicide.
45-5-106 through 45-5-110 reserved.
45-5-111. Extrajudicial confession — evidence of death.
45-5-112. Inference of mental state.

Part 2 — Assault

45-5-201. Assault.
45-5-202. Aggravated assault — felony assault.
45-5-203. Intimidation.
45-5-204. Mistreating prisoners.
45-5-205. Negligent vehicular assault — penalty.
45-5-206. Domestic abuse.

Part 3 — Kidnapping

45-5-301. Unlawful restraint.
45-5-302. Kidnapping.
45-5-303. Aggravated kidnapping.
45-5-304. Custodial interference.

Part 4 — Robbery

45-5-401. Robbery.

Part 5 — Sexual Crimes

45-5-501. Definition.
45-5-502. Sexual assault.
45-5-503. Sexual intercourse without consent.
45-5-504. Indecent exposure.
45-5-505. Deviate sexual conduct.
45-5-506. Renumbered 45-5-511 by Code Commissioner, 1983.
45-5-507. Incest.
45-5-508 through 45-5-510 reserved.
45-5-511. Provisions generally applicable to sexual crimes.

Part 6 — Offenses Against the Family

45-5-601. Prostitution.
45-5-602. Promoting prostitution.
45-5-603. Aggravated promotion of prostitution.
45-5-604. Evidence in cases of promotion.
45-5-605 through 45-5-610 reserved.
45-5-611. Bigamy.
45-5-612. Marrying a bigamist.
45-5-613. Renumbered 45-5-507 by Code Commissioner, 1983.
45-5-614 through 45-5-620 reserved.
45-5-621. Nonsupport.
45-5-622. Endangering the welfare of children.
45-5-623. Unlawful transactions with children.
45-5-624. Unlawful possession of an intoxicating substance — interference with sentence or court order.
45-5-625. Sexual abuse of children.
45-5-626. Violation of protective order — misdemeanor.

Part 1

Homicide

45-5-101. Criminal homicide. (1) A person commits the offense of criminal homicide if he purposely, knowingly, or negligently causes the death of another human being.

(2) Criminal homicide is deliberate homicide, mitigated deliberate homicide, or negligent homicide.

History: En. 94-5-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-101.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "negligently", 45-2-101.

Definition of "purposely", 45-2-101.

Causal relationship between conduct and result, 45-2-201.

Protection of premature infants born alive, 50-20-108.

45-5-102. Deliberate homicide. (1) Except as provided in 45-5-103(1), criminal homicide constitutes deliberate homicide if:

(a) it is committed purposely or knowingly; or

(b) it is committed while the offender is engaged in or is an accomplice in the commission of, an attempt to commit, or flight after committing or attempting to commit robbery, sexual intercourse without consent, arson, burglary, kidnapping, felonious escape, or any other felony which involves the use or threat of physical force or violence against any individual.

(2) A person convicted of the offense of deliberate homicide shall be punished by death or life imprisonment as provided in 46-18-301 through 46-18-310 or by imprisonment in the state prison for a term of not less than 10 years or more than 100 years, except as provided in 46-18-222.

History: En. 94-5-102 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 11, Ch. 338, L. 1977; amd. Sec. 4, Ch. 584, L. 1977; R.C.M. 1947, 94-5-102; amd. Sec. 1, Ch. 322, L. 1979.

Cross-References

Definition of "felony", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

Causal relationship between conduct and result, 45-2-201.

Burden of the state in homicide trial, 45-5-111, 45-5-112.

Kidnapping, 45-5-301 through 45-5-304.

Robbery, 45-5-401.

Sexual intercourse without consent, 45-5-503.

Arson, 45-6-103.

Burglary, 45-6-204.

Escape, 45-7-306.

Limitation on deferred imposition of sentence, 46-18-201.

Sentences for certain offenses committed in state prison, 46-18-220.

Killing of peace officer — aggravating circumstances, 46-18-303.

Protection of premature infants born alive, 50-20-108.

45-5-103. Mitigated deliberate homicide. (1) Criminal homicide constitutes mitigated deliberate homicide when a homicide which would otherwise be deliberate homicide is committed under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the actor's situation.

(2) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for a term of not less than 2 years or more than 40 years and may be fined not more than $50,000, except as provided in 46-18-222.

History: En. 94-5-103 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 5, Ch. 584, L. 1977; R.C.M. 1947, 94-5-103; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsection (2) of sec. 7, Ch. 198, L. 1981, provided: "There is added to those sections listed in subsection (1) of section 1 [46-18-231], following the language in those sections specifying the term of imprisonment for which an offender may be imprisoned, the words "and may be fined not more than $50,000" or other similar language allowing the court to fine the offender a maximum of $50,000 in addition to a term of imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section."

Cross-References

Criminal homicide, 45-5-101.

Deliberate homicide, 45-5-102.

Limitation on deferral or suspension of sentence, 46-18-201.

Sentences for certain offenses committed in state prison, 46-18-220.

Protection of premature infants born alive, 50-20-108.

Ground for suspension or revocation of driver's license, 61-5-405.

45-5-104. Negligent homicide. (1) Criminal homicide constitutes negligent homicide when it is committed negligently.

(2) A person convicted of negligent homicide shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: **En. 94-5-104 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-104; amd. Sec. 7, Ch. 198, L. 1981.**

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Classification of offenses, 45-1-201.

Definition of "negligently", 45-2-101.

Protection of premature infants born alive, 50-20-108.

Ground for suspension or revocation of driver's license, 61-5-405.

45-5-105. Aiding or soliciting suicide. (1) A person who purposely aids or solicits another to commit suicide, but such suicide does not occur, commits the offense of aiding or soliciting suicide.

(2) A person convicted of the offense of aiding or soliciting a suicide shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: **En. 94-5-106 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-106; amd. Sec. 7, Ch. 198, L. 1981.**

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505,

45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Definition of "purposely", 45-2-101.

Causal relationship between conduct and result, 45-2-201.

When accountability exists, 45-2-302.

Criminal homicide, 45-5-101.

45-5-106 through 45-5-110 reserved.

45-5-111. Extrajudicial confession — evidence of death. In a homicide trial, before an extrajudicial confession may be admitted into evidence, the state must introduce independent evidence tending to establish the death and the fact that the death was caused by a criminal agency.

History: En. 95-3004 by Sec. 12, Ch. 513, L. 1973; amd. Sec. 49, Ch. 184, L. 1977; R.C.M. 1947, 95-3004; MCA 1981, 46-16-203(1); redes. 45-5-111 by Code Commissioner, 1983.

Compiler's Comments

Sections Not Part of Criminal Code: This section and 45-5-112 were not enacted as part of the Criminal Code of 1973 and were previously compiled as part of Title 46 on Criminal Procedure. The sections have been renumbered to this part for convenience. References to "Title 45" or to "this title" or "this code", meaning Title 45, technically do not include these sections.

45-5-112. Inference of mental state. In a deliberate homicide, knowledge or purpose may be inferred from the fact that the accused committed a homicide and no circumstances of mitigation, excuse, or justification appear.

History: En. 95-3004 by Sec. 12, Ch. 513, L. 1973; amd. Sec. 49, Ch. 184, L. 1977; R.C.M. 1947, 95-3004; MCA 1981, 46-16-203(2); redes. 45-5-112 by Code Commissioner, 1983.

Compiler's Comments

Sections Not Part of Criminal Code: See compiler's comments to 45-5-111.

Cross-References

Inference of mental state generally, 45-2-103.

Part 2

Assault

45-5-201. Assault. (1) A person commits the offense of assault if he:

(a) purposely or knowingly causes bodily injury to another;

(b) negligently causes bodily injury to another with a weapon;

(c) purposely or knowingly makes physical contact of an insulting or provoking nature with any individual; or

(d) purposely or knowingly causes reasonable apprehension of bodily injury in another. The purpose to cause reasonable apprehension or the knowledge that reasonable apprehension would be caused shall be presumed in any case in which a person knowingly points a firearm at or in the direction of another, whether or not the offender believes the firearm to be loaded.

(2) Except as provided in subsection (3), a person convicted of assault shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

(3) If the victim is less than 14 years old and the offender is 18 or more years old, the offender, upon conviction under subsection (1)(a), shall be fined

not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both.

History: En. 94-5-201 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-201; amd. Sec. 1, Ch. 261, L. 1979; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Definition of "bodily injury", 45-2-101.
Definition of "knowingly", 45-2-101.
Definition of "negligently", 45-2-101.
Definition of "purposely", 45-2-101.
Definition of "weapon", 45-2-101.

45-5-202. Aggravated assault — felony assault. (1) A person commits the offense of aggravated assault if he purposely or knowingly causes serious bodily injury to another.

(2) A person commits the offense of felony assault if he purposely or knowingly causes:

(a) bodily injury to another with a weapon;

(b) reasonable apprehension of serious bodily injury in another by use of a weapon; or

(c) bodily injury to a peace officer or a person who is responsible for the care or custody of a prisoner.

(3) A person convicted of aggravated assault shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222. A person convicted of felony assault shall be imprisoned in the state prison for a term not to exceed 10 years or be fined not more than $50,000, or both.

History: En. 94-5-202 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 6, Ch. 584, L. 1977; R.C.M. 1947, 94-5-202; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 289, L. 1981; amd. Sec. 1, Ch. 163, L. 1985.

Compiler's Comments

1985 Amendment: In (2) inserted introductory clause; and in (3) inserted last sentence.

1981 Amendments: Subsection (2) of sec. 7, Ch. 198, L. 1981, provided: "There is added to those sections listed in subsection (1) of section 1 [46-18-231], following the language in those sections specifying the term of imprisonment for which an offender may be imprisoned, the words "and may be fined not more than $50,000" or other similar language allowing the court to fine the offender a maximum of $50,000 in addition to a term of imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section."

Chapter 289 added "or a person who is responsible for the care or custody of a prisoner" to (1)(d) (now (2)(c)).

Cross-References

Definition of "bodily injury", 45-2-101.
Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.
Definition of "serious bodily injury", 45-2-101.
Definition of "weapon", 45-2-101.
Time of making arrest — domestic violence or aggravated assault against family or household member, 46-6-105.
Circumstances of making arrest — domestic abuse or aggravated assault against family or household member, 46-6-401.
Written report when no arrest made in domestic violence situation, 46-6-421.
Notice of rights to victim upon arrest in domestic violence situation, 46-6-422.
Limitation on deferral or suspension of sentence, 46-18-201.
Sentences for certain offenses committed in state prison, 46-18-220.

45-5-203. Intimidation. (1) A person commits the offense of intimidation when, with the purpose to cause another to perform or to omit the performance of any act, he communicates to another, under circumstances which reasonably tend to produce a fear that it will be carried out, a threat to perform without lawful authority any of the following acts:

(a) inflict physical harm on the person threatened or any other person;

(b) subject any person to physical confinement or restraint; or

(c) commit any felony.

(2) A person commits the offense of intimidation if he knowingly communicates a threat or false report of a pending fire, explosion, or disaster which would endanger life or property.

(3) A person convicted of the offense of intimidation shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-5-203 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-203; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 268, L. 1985.

Compiler's Comments

1985 Amendment: Near middle of (1) before "a threat", inserted "under circumstances which reasonably tend to produce a fear that it will be carried out"; at end of (1)(a) deleted "or on property"; in (c) substituted "felony" for "criminal offense"; and deleted former (1)(d) through (1)(f) that read: "(d) accuse any person of an offense;

(e) expose any person to hatred, contempt, or ridicule; or

(f) take action as a public official against anyone or anything, withhold official action, or cause such action or withholding".

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Definition of "knowingly", 45-2-101.
Definition of "offense", 45-2-101.
Definition of "purposely", 45-2-101.

45-5-204. Mistreating prisoners. (1) A person commits the offense of mistreating prisoners if, being responsible for the care or custody of a prisoner, he purposely or knowingly:

(a) assaults or otherwise injures a prisoner;

(b) intimidates, threatens, endangers, or withholds reasonable necessities from the prisoner with the purpose to obtain a confession from him or for any other purpose; or

(c) violates any civil right of a prisoner.

(2) A person convicted of the offense of mistreating prisoners shall be removed from office or employment and shall be imprisoned in the state prison for a term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-8-113 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-113; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

Definition of "threat", 45-2-101.

Criminal responsibility of corporations, 45-2-311.

45-5-205. Negligent vehicular assault — penalty. (1) If a person operates a motor vehicle in a negligent manner and he is driving while under the influence of alcohol or drugs, as provided for in 61-8-401(1), and his conduct is the proximate cause of serious bodily injury to another, he commits the offense of negligent vehicular assault.

(2) A person convicted of the offense of negligent vehicular assault shall be fined an amount not to exceed $1,000 or imprisoned in the county jail for a term not to exceed 1 year, or both.

History: En. Sec. 1, Ch. 93, L. 1985.

45-5-206. Domestic abuse. (1) A person commits the offense of domestic abuse if he:

(a) purposely or knowingly causes bodily injury to a family member or household member; or

(b) purposely or knowingly causes reasonable apprehension of bodily injury in a family member or household member. The purpose to cause reasonable apprehension or the knowledge that reasonable apprehension would be caused shall be presumed in any case in which a person knowingly points a firearm at or in the direction of a family member or household member, whether or not the offender believes the firearm to be loaded.

(2) For the purposes of this section and 46-6-401, "family member or household member" means a spouse, former spouse, adult person related by

blood or marriage, or adult person of the opposite sex residing with the defendant or who formerly resided with the defendant.

(3) A person convicted of domestic abuse for the first or second time shall be fined not to exceed $500 or be imprisoned in the county jail not to exceed 6 months, or both. On a third or subsequent conviction for domestic abuse, the person convicted shall be fined not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both.

History: En. Sec. 1, Ch. 700, L. 1985.

Cross-References

Time of making arrest — domestic violence or aggravated assault against family or household member, 46-6-105.

Circumstances of making arrest — domestic abuse or aggravated assault against family or household member, 46-6-401.

Written report when no arrest made in domestic violence situation, 46-6-421.

Notice of rights to victim upon arrest in domestic violence situation, 46-6-422.

Part 3

Kidnapping

45-5-301. Unlawful restraint. (1) A person commits the offense of unlawful restraint if he knowingly or purposely and without lawful authority restrains another so as to interfere substantially with his liberty.

(2) A person convicted of the offense of unlawful restraint shall be fined not to exceed $500 or imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-5-301 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-301.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

45-5-302. Kidnapping. (1) A person commits the offense of kidnapping if he knowingly or purposely and without lawful authority restrains another person by either secreting or holding him in a place of isolation or by using or threatening to use physical force.

(2) A person convicted of the offense of kidnapping shall be imprisoned in the state prison for a term of not less than 2 years or more than 10 years and may be fined not more than $50,000, except as provided in 46-18-222.

History: En. 94-5-302 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 7, Ch. 584, L. 1977; R.C.M. 1947, 94-5-302; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsection (2) of sec. 7, Ch. 198, L. 1981, provided: "There is added to those sections listed in subsection (1) of section 1 [46-18-231], following the language in those sections specifying the term of imprisonment for which an offender may be imprisoned, the words "and may be fined not more than $50,000" or other similar language allowing the court to fine the offender a maximum of $50,000 in addition to a term of imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section."

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

Limitation upon deferral or suspension of sentence, 46-18-201.

45-5-303. Aggravated kidnapping. (1) A person commits the offense of aggravated kidnapping if he knowingly or purposely and without lawful authority restrains another person by either secreting or holding him in a place of isolation or by using or threatening to use physical force, with any of the following purposes:

(a) to hold for ransom or reward or as a shield or hostage;

(b) to facilitate commission of any felony or flight thereafter;

(c) to inflict bodily injury on or to terrorize the victim or another;

(d) to interfere with the performance of any governmental or political function; or

(e) to hold another in a condition of involuntary servitude.

(2) Except as provided in 46-18-222, a person convicted of the offense of aggravated kidnapping shall be punished by death or life imprisonment as provided in 46-18-301 through 46-18-310 or be imprisoned in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than $50,000, unless he has voluntarily released the victim alive, in a safe place, and not suffering from serious bodily injury, in which event he shall be imprisoned in the state prison for a term of not less than 2 years or more than 10 years and may be fined not more than $50,000.

History: En. 94-5-303 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 12, Ch. 338, L. 1977; amd. Sec. 8, Ch. 584, L. 1977; R.C.M. 1947, 94-5-303; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsection (2) of sec. 7, Ch. 198, L. 1981, provided: "There is added to those sections listed in subsection (1) of section 1 [46-18-231], following the language in those sections specifying the term of imprisonment for which an offender may be imprisoned, the words "and may be fined not more than $50,000" or other similar language allowing the court to fine the offender a maximum of $50,000 in addition to a term of imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section."

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

Unlawful restraint, 45-5-301.

Kidnapping, 45-5-302.

Limitation on deferral or suspension of sentence, 46-18-201.

Sentences for certain offenses committed in state prison, 46-18-220.

45-5-304. Custodial interference. (1) A person commits the offense of custodial interference if, knowing that he has no legal right to do so, he takes, entices, or withholds from lawful custody any child, incompetent person, or other person entrusted by authority of law to the custody of another person or institution.

(2) A person convicted of the offense of custodial interference shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(3) A person who has not left the state does not commit an offense under this section if he voluntarily returns such person to lawful custody prior to arraignment. A person who has left the state does not commit an offense under this section if he voluntarily returns such person to lawful custody prior to arrest.

History: En. 94-5-305 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-305; amd. Sec. 1, Ch. 274, L. 1979; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Definition of "knowingly", 45-2-101.
Kidnapping, 45-5-302.
Aggravated kidnapping, 45-5-303.

Part 4

Robbery

45-5-401. Robbery. (1) A person commits the offense of robbery if in the course of committing a theft he:

(a) inflicts bodily injury upon another;

(b) threatens to inflict bodily injury upon any person or purposely or knowingly puts any person in fear of immediate bodily injury; or

(c) commits or threatens immediately to commit any felony other than theft.

(2) A person convicted of the offense of robbery shall be imprisoned in the state prison for a term of not less than 2 years or more than 40 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) "In the course of committing a theft" as used in this section includes acts which occur in an attempt to commit or in the commission of theft or in flight after the attempt or commission.

History: En. 94-5-401 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 9, Ch. 584, L. 1977; R.C.M. 1947, 94-5-401; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsection (2) of sec. 7, Ch. 198, L. 1981, provided: "There is added to those sections listed in subsection (1) of section 1 [46-18-231], following the language in those sections specifying the term of imprisonment for which an offender may be imprisoned, the words "and may be fined not more than $50,000" or other similar language allowing the court to fine the offender a maximum of $50,000 in addition to a term of imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section."

Cross-References

Definition of "bodily injury", 45-2-101.
Definition of "felony", 45-2-101.
Definition of "knowingly", 45-2-101.
Definition of "threat", 45-2-101.
Theft, 45-6-301.
Limitation on deferral or suspension of sentence, 46-18-201.

Part 5

Sexual Crimes

Part Cross-References

Presentence investigation, 46-18-111.

45-5-501. Definition. As used in 45-5-503 and 45-5-505, the term "without consent" means:

(1) the victim is compelled to submit by force or by threat of imminent death, bodily injury, or kidnapping to be inflicted on anyone; or

(2) the victim is incapable of consent because he is:

(a) mentally defective or incapacitated;

(b) physically helpless; or

(c) less than 16 years old.

History: En. 94-5-501 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 405, L. 1975; amd. Sec. 15, Ch. 359, L. 1977; R.C.M. 1947, 94-5-501.

Cross-References

Definition of "mentally defective", 45-2-101.

Definition of "mentally incapacitated", 45-2-101.

Definition of "physically helpless", 45-2-101.

Definition of "sexual contact", 45-2-101.

Definition of "sexual intercourse", 45-2-101.

Consent as a defense, 45-2-211.

Sexual intercourse without consent, 45-5-503.

Deviate sexual conduct, 45-5-505.

Sexual abuse of children, 45-5-625.

45-5-502. Sexual assault. (1) A person who knowingly subjects another not his spouse to any sexual contact without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, he shall be imprisoned in the state prison for any term not to exceed 20 years and may be fined not more than $50,000.

(4) An act "in the course of committing sexual assault" shall include an attempt to commit the offense or flight after the attempt or commission.

(5) Consent is ineffective under this section if the victim is less than 14 years old and the offender is 3 or more years older than the victim.

History: En. 94-5-502 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-502; amd. Sec. 1, Ch. 687, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 172, L. 1985.

Compiler's Comments

1985 Amendment: At end of (2) inserted "or both".

1981 Amendment: Subsection (2) of sec. 7, Ch. 198, L. 1981, provided: "There is added to those sections listed in subsection (1) of section 1 [46-18-231], following the language in those sections specifying the term of imprisonment for which an offender may be imprisoned, the words "and may be fined not more than $50,000" or other similar language allowing the court to fine the offender a maximum of $50,000 in addition to a term of imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section."

Cross-References

Victim less than 16 years old — extension of Statute of Limitations, 45-1-205.

Definition of "bodily injury", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

Definition of "sexual contact", 45-2-101.

Sexual abuse of children, 45-5-625.

Videotaped testimony of victim, 46-15-401.

45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with a person of the opposite sex commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of his spouse as provided in 45-5-501(2)(c).

(2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, he shall be imprisoned in the state prison for any term of not less than 2 years or more than 40 years and may be fined not more than $50,000, except as provided in 46-18-222.

(b) An act "in the course of committing sexual intercourse without consent" shall include an attempt to commit the offense or flight after the attempt or commission.

(4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

History: En. 94-5-503 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 2, L. 1975; amd. Sec. 1, Ch. 129, L. 1975; amd. Sec. 1, Ch. 94, L. 1977; amd. Sec. 16, Ch. 359, L. 1977; amd. Sec. 10, Ch. 584, L. 1977; R.C.M. 1947, 94-5-503; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 2, Ch. 172, L. 1985; amd. Sec. 1, Ch. 356, L. 1985; amd. Sec. 1, Ch. 644, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 172 deleted former (5) through (7) (now (4) through (6) of 45-5-511).

Chapter 356 in (1) after "opposite sex", deleted "not his spouse", and inserted second sentence.

Chapter 644 inserted (4).

1981 Amendment: Subsection (2) of sec. 7, Ch. 198, L. 1981, provided: "There is added to those sections listed in subsection (1) of section 1 [46-18-231], following the language in those sections specifying the term of imprisonment for which an offender may be imprisoned, the words "and may be fined not more than $50,000" or other similar language allowing the court to fine the offender a maximum of $50,000 in addition to a term of imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section."

Cross-References

Victim less than 16 years old — extension of Statute of Limitations, 45-1-205.

Definition of "knowingly", 45-2-101.

Definition of "mentally defective", 45-2-101.

Definition of "mentally incapacitated", 45-2-101.

Definition of "sexual intercourse", 45-2-101.

Definition of "without consent", 45-5-501.

Sexual abuse of children, 45-5-625.

Limitation on deferral or suspension of sentence, 46-18-201.

45-5-504. Indecent exposure. (1) A person who, for the purpose of arousing or gratifying sexual desire of himself or of any person other than his spouse, exposes his genitals under circumstances in which he knows his conduct is likely to cause affront or alarm commits the offense of indecent exposure.

(2) A person convicted of the offense of indecent exposure shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-5-504 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-504.

Cross-References

Victim less than 16 years old — extension of Statute of Limitations, 45-1-205.

Definition of "purposely", 45-2-101.

Causal relationship between conduct and result, 45-2-201.

Obscenity, 45-8-201.

45-5-505. Deviate sexual conduct. (1) A person who knowingly engages in deviate sexual relations or who causes another to engage in deviate sexual relations commits the offense of deviate sexual conduct.

(2) A person convicted of the offense of deviate sexual conduct shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(3) A person convicted of deviate sexual conduct without consent shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-5-505 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-505; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Victim less than 16 years old — extension of Statute of Limitations, 45-1-205.

Definition of "deviate sexual relations", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "sexual contact", 45-2-101.

Definition of "without consent", 45-5-501, 45-5-511.

Sexual abuse of children, 45-5-625.

Videotaped testimony of victim, 46-15-401.

45-5-506. Renumbered 45-5-511 by Code Commissioner, 1983.

45-5-507. Incest. (1) A person commits the offense of incest if he knowingly marries, cohabits with, has sexual intercourse with, or has sexual contact as defined in 45-2-101 with an ancestor, a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The relationships referred to herein include blood relationships without regard to legitimacy, relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

(2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but consent is ineffective if the victim is less than 18 years old.

(3) A person convicted of incest shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(4) In addition to any sentence imposed under subsection (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense.

The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

History: En. 94-5-606 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-606; amd. Sec. 7, Ch. 198, L. 1981; MCA 1981, 45-5-613; redes. 45-5-507 by Code Commissioner, 1983; amd. Sec. 1, Ch. 438, L. 1983; amd. Sec. 2, Ch. 644, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (4).

1983 Amendment: Near beginning of (1), after "cohabits" inserted "with"; after "intercourse with" inserted "or has sexual contact as defined in 45-2-101 with"; near middle of (1) after "half blood" inserted "or any stepson or stepdaughter"; at end of (1) after "adoption" inserted "and relationships involving a stepson or stepdaughter"; inserted (2); and made minor changes in phraseology.

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613 (redesignated 45-5-507), 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Victim less than 16 years old — extension of Statute of Limitations, 45-1-205.

Definition of "cohabit", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "sexual intercourse", 45-2-101.

Videotaped testimony of victim, 46-15-401.

45-5-508 through 45-5-510 reserved.

45-5-511. Provisions generally applicable to sexual crimes. (1) When criminality depends on the victim being less than 16 years old, it is a defense for the offender to prove that he reasonably believed the child to be above that age. Such belief shall not be deemed reasonable if the child is less than 14 years old.

(2) Whenever the definition of an offense excludes conduct with a spouse, the exclusion shall be deemed to extend to persons living as husband and wife regardless of the legal status of their relationship. The exclusion shall be inoperative as respects spouses living apart whether under a decree of judicial separation or otherwise. Where the definition of an offense excludes conduct with a spouse, this shall not preclude conviction of a spouse in a sexual act which he or she causes another person, not within the exclusion, to perform.

(3) In a prosecution under the preceding sections on sexual crimes (45-5-502 through 45-5-504) in which the victim's lack of consent is based solely upon his incapacity to consent because he was mentally incapacitated, it is a defense to such prosecution that the victim was a voluntary social companion of the defendant and the intoxicating substance was voluntarily and knowingly taken.

(4) No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this part except:

(a) evidence of the victim's past sexual conduct with the offender;

(b) evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution.

(5) If the defendant proposes for any purpose to offer evidence described in subsection (4)(a) or (4)(b), the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under subsection (4).

(6) Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim.

History: En. 94-5-506 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 17, Ch. 359, L. 1977; R.C.M. 1947, 94-5-506; amd. Sec. 3, Ch. 407, L. 1979; MCA 1981, 45-5-506; redes. 45-5-511 by Code Commissioner, 1983; amd. Sec. 3, Ch. 172, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (4) through (6), formerly (5) through (7) of 45-5-503.

Cross-References

Definition of "intoxicating substance", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "mentally incapacitated", 45-2-101.

Definition of "without consent", 45-5-501.

Sexual assault, 45-5-502.

Sexual intercourse without consent, 45-5-503.

Indecent exposure, 45-5-504.

Sexual abuse of children, 45-5-625.

Videotaped testimony of victim, 46-15-401.

Part 6

Offenses Against the Family

45-5-601. Prostitution. (1) A person commits the offense of prostitution if such person engages in or agrees or offers to engage in sexual intercourse with another person for compensation, whether such compensation is received or to be received or paid or to be paid.

(2) A person convicted of prostitution shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-5-602 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 80, L. 1975; R.C.M. 1947, 94-5-602.

Cross-References

Definition of "public place", 45-2-101.

Definition of "sexual intercourse", 45-2-101.

45-5-602. Promoting prostitution. (1) A person commits the offense of promoting prostitution if he purposely or knowingly commits any of the following acts:

(a) owns, controls, manages, supervises, resides in, or otherwise keeps, alone or in association with others, a house of prostitution or a prostitution business;

(b) procures an inmate for a house of prostitution or a place in a house of prostitution for one who would be an inmate;

(c) encourages, induces, or otherwise purposely causes another to become or remain a prostitute;

(d) solicits a person to patronize a prostitute;

(e) procures a prostitute for a patron;

(f) transports a person into or within this state with the purpose to promote that person's engaging in prostitution or procures or pays for transportation with that purpose;

(g) leases or otherwise permits a place controlled by the offender, alone or in association with others, to be regularly used for prostitution or for the procurement of prostitution or fails to make reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or using other legally available means; or

(h) lives in whole or in part upon the earnings of a person engaging in prostitution, unless the person is the prostitute's minor child or other legal dependent incapable of self-support.

(2) A person convicted of promoting prostitution shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-5-603 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 2, L. 1975; R.C.M. 1947, 94-5-603(part).

Cross-References

Definition of "house of prostitution", 45-2-101.
Definition of "inmate", 45-2-101.
Definition of "knowingly", 45-2-101.
Definition of "purposely", 45-2-101.
Definition of "solicit", 45-2-101.
Prostitution, 45-5-601.
Evidence in cases of promotion, 45-5-604.

45-5-603. Aggravated promotion of prostitution. (1) A person commits the offense of aggravated promotion of prostitution if he purposely or knowingly commits any of the following acts:

(a) compels another to engage in or promote prostitution;

(b) promotes prostitution of a child under the age of 18 years, whether or not he is aware of the child's age;

(c) promotes the prostitution of one's spouse, child, ward, or any person for whose care, protection, or support he is responsible.

(2) A person convicted of aggravated promotion of prostitution shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-5-603 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 2, L. 1975; R.C.M. 1947, 94-5-603(part); amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Definition of "knowingly", 45-2-101.
Definition of "purposely", 45-2-101.
Prostitution, 45-5-601.
Promoting prostitution, 45-5-602.
Evidence in cases of promotion, 45-5-604.

45-5-604. Evidence in cases of promotion. (1) On the issue whether a place is a house of prostitution, the following, in addition to all other admissible evidence, shall be admissible:

(a) its general repute;

(b) the repute of the persons who reside in or frequent the place; or

(c) the frequency, timing, and duration of visits by nonresidents.

(2) Testimony of a person against his spouse shall be admissible under 45-5-602, 45-5-603, and this section.

History: **En. 94-5-603 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 2, L. 1975; R.C.M. 1947, 94-5-603(4).**

Cross-References

Definition of "house of prostitution", 45-2-101.

Prostitution, 45-5-601.

Promoting prostitution, 45-5-602.

Aggravated promotion of prostitution, 45-5-603.

45-5-605 through 45-5-610 reserved.

45-5-611. Bigamy. (1) A person commits the offense of bigamy if, while married, he knowingly contracts or purports to contract another marriage unless at the time of the subsequent marriage:

(a) the offender believes on reasonable grounds that the prior spouse is dead;

(b) the offender and the prior spouse have been living apart for 5 consecutive years throughout which the prior spouse was not known by the offender to be alive;

(c) a court has entered a judgment purporting to terminate or annul any prior disqualifying marriage and the offender does not know that judgment to be invalid; or

(d) the offender reasonably believes that he is legally eligible to remarry.

(2) A person convicted of bigamy shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: **En. 94-5-604 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-604.**

Cross-References

Definition of "knowingly", 45-2-101.

45-5-612. Marrying a bigamist. (1) A person commits the offense of marrying a bigamist if he contracts or purports to contract a marriage with another knowing that the other is thereby committing bigamy.

(2) A person convicted of the offense of marrying a bigamist shall be fined not to exceed $500 or be imprisoned in the county jail for any period not to exceed 6 months, or both.

History: **En. 94-5-605 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-605.**

Cross-References

Definition of "knowingly", 45-2-101.

Bigamy, 45-5-611.

45-5-613. Renumbered 45-5-507 by Code Commissioner, 1983.

45-5-614 through 45-5-620 reserved.

45-5-621. Nonsupport. (1) A person commits the offense of nonsupport if he fails to provide support which he can provide and which he knows he is legally obliged to provide to a spouse, child, or other dependent.

(2) A person commits the offense of aggravated nonsupport if:

(a) the offender has left the state to avoid the duty of support; or

(b) the offender has been previously convicted of the offense of nonsupport.

(3) A person convicted of nonsupport shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of aggravated nonsupport shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

(4) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of nonsupport paid to or for the benefit of any person that the defendant has failed to support.

History: En. 94-5-608 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 19, Ch. 359, L. 1977; R.C.M. 1947, 94-5-608; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Mutual obligations of husband and wife, 40-2-101.

Duties of husband and wife as to support, 40-2-102.

Support of spouse, 40-2-103.

Liability of married person when abandoned by spouse, 40-2-104.

Child support, 40-4-204.

Enforcement of support, Title 40, ch. 5.

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

Definition of "knowingly", 45-2-101.

45-5-622. Endangering the welfare of children. (1) A parent, guardian, or other person supervising the welfare of a child less than 16 years old commits the offense of endangering the welfare of children if he knowingly endangers the child's welfare by violating a duty of care, protection, or support.

(2) A parent or guardian or any person who is 18 years of age or older, whether or not he is supervising the welfare of the child, commits the offense of endangering the welfare of children if he knowingly contributes to the delinquency of a child less than 16 years old by:

(a) supplying or encouraging the use of intoxicating substances by the child; or

(b) assisting, promoting, or encouraging the child to:

(i) abandon his place of residence without the consent of his parents or guardian;

(ii) enter a place of prostitution; or

(iii) engage in sexual conduct.

(3) A person convicted of endangering the welfare of children shall be fined not to exceed $500 or imprisoned in the county jail for any term not

to exceed 6 months, or both. A person convicted of a second offense of endangering the welfare of children shall be fined not to exceed $1,000 or imprisoned in the county jail for any term not to exceed 6 months, or both.

(4) On the issue of whether there has been a violation of the duty of care, protection, and support, the following, in addition to all other admissible evidence, is admissible: cruel treatment; abuse; infliction of unnecessary and cruel punishment; abandonment; neglect; lack of proper medical care, clothing, shelter, and food; and evidence of past bodily injury.

(5) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of endangering the welfare of children paid to or for the benefit of the person or persons whose welfare the defendant has endangered.

History: En. 94-5-607 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 85, L. 1975; amd. Sec. 1, Ch. 218, L. 1977; amd. Sec. 18, Ch. 359, L. 1977; R.C.M. 1947, 94-5-607.

Cross-References
Definition of "knowingly", 45-2-101.

45-5-623. Unlawful transactions with children. (1) A person commits the offense of unlawful transactions with children if he knowingly:

(a) sells or gives explosives to a child under the age of majority except as authorized under appropriate city ordinances;

(b) sells or gives intoxicating substances other than alcoholic beverages to a child under the age of majority;

(c) sells or gives alcoholic beverages to a person under 19 years of age; or

(d) being a junk dealer, pawnbroker, or secondhand dealer, receives or purchases goods from a child under the age of majority without authorization of the parent or guardian.

(2) A person convicted of the offense of unlawful transactions with children shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of unlawful transactions with children shall be fined not to exceed $1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-5-609 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-609; amd. Sec. 2, Ref. 74, app. Nov. 7, 1978.

Cross-References
Adult rights, Art. II, sec. 14, Mont. Const.
Definition of "intoxicating substance", 45-2-101.
Definition of "knowingly", 45-2-101.

45-5-624. Unlawful possession of an intoxicating substance — interference with sentence or court order. (1) A person under the age of 18 years commits the offense of possession of an intoxicating substance if he knowingly has in his possession an intoxicating substance other than an alcoholic beverage. A person under the age of 19 commits the offense of possession of an intoxicating substance if he knowingly has in his possession an alcoholic beverage, except that he does not commit the offense when in the course of his employment it is necessary to possess alcoholic beverages.

(2) A person convicted of the offense of possession of an intoxicating substance shall:

(a) be fined not to exceed $50;

(b) be ordered to complete and, if financially able, pay all costs of his participation in a community-based substance abuse information course;

(c) have his driver's license confiscated by the court for not more than 90 days and be ordered not to drive during that period if he was driving or otherwise in actual physical control of a motor vehicle when the offense occurred; or

(d) be sentenced to any combination of these penalties.

(3) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when he failed to comply must be transferred to the youth court. If proceedings for violation of subsection (1) are held in the youth court, the penalties in subsection (2) do not apply. If proceedings for violation of subsection (1) or for failure to comply with a sentence are held in the youth court, the offender shall be treated as an alleged youth in need of supervision as defined in 41-5-103(13). In such case, the youth court may enter its judgment under 41-5-523.

(4) A person commits the offense of interference with a sentence or court order if he purposely or knowingly causes his child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined $100 or imprisoned in the county jail for 10 days, or both.

History: En. 94-5-610 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 87, L. 1974; amd. Sec. 1, Ch. 536, L. 1977; R.C.M. 1947, 94-5-610; amd. Sec. 3, Ref. 74, app. Nov. 7, 1978; amd. Sec. 1, Ch. 105, L. 1985.

Compiler's Comments

1985 Amendment: In (2)(a) after "$50" deleted "or be imprisoned in the county jail for any term not to exceed 10 days, or both"; inserted (2)(b), (2)(c), and (2)(d); in (3) substituted present language for: "If proceedings are held in the youth court, the preceding penalty does not apply, and the offender shall be treated as an alleged youth in need of supervision as defined in 41-5-103(13). In such case, the youth court may enter its judgment under 41-5-523"; and inserted (4).

Cross-References

Adult rights, Art. II, sec. 14, Mont. Const.

Unlawful purchase of alcoholic beverage, 16-3-301.

Penalty for violation of liquor code by underage person, 16-6-314.

Definition of "intoxicating substance", 45-2-101.

Definition of "knowingly", 45-2-101.

45-5-625. Sexual abuse of children. (1) A person commits the offense of sexual abuse of children if he knowingly:

(a) employs, uses, or permits the employment or use of a child in an exhibition of sexual contact, actual or simulated;

(b) photographs, films, videotapes, or records a child engaging in sexual contact, actual or simulated;

(c) persuades, entices, counsels, or procures a child to engage in sexual contact, actual or simulated, for use as designated in (1)(a), (1)(b), or (1)(d);

(d) processes, develops, prints, publishes, transports, distributes, sells, possesses with intent to sell, exhibits, or advertises material consisting of or including a photograph, photographic negative, undeveloped film, videotape, or recording representing a child engaging in sexual contact, actual or simulated; or

(e) finances any of the activities described in subsections (1)(a) through (1)(d) knowing that the activity is of the nature described in those subsections.

(2) A person convicted of the offense of sexual abuse of children shall be fined not to exceed $10,000 or be imprisoned in the state prison for any term not to exceed 20 years, or both.

(3) For the purposes of this section, "child" means any person less than 16 years old.

History: En. Sec. 1, Ch. 505, L. 1979.

Cross-References

Victim less than 16 years old — extension of Statute of Limitations, 45-1-205.

Definition of "knowingly", 45-2-101.

Definition of "sexual contact", 45-2-101.

Sexual crimes, Title 45, ch. 5, part 5.

45-5-626. Violation of protective order — misdemeanor. (1) A person commits the offense of violation of a protective order if he, with knowledge of the order, purposely or knowingly violates a provision of any order provided for in 40-4-121.

(2) A person convicted of violation of a protective order shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. Sec. 9, Ch. 526, L. 1985.

CHAPTER 6

OFFENSES AGAINST PROPERTY

Part 1 — Criminal Mischief and Arson

Section
45-6-101. Criminal mischief.
45-6-102. Negligent arson.
45-6-103. Arson.

Part 2 — Criminal Trespass and Burglary

45-6-201. Definition of "enter or remain unlawfully".
45-6-202. Criminal trespass to vehicles.
45-6-203. Criminal trespass to property.
45-6-204. Burglary.
45-6-205. Possession of burglary tools.

Part 3 — Theft and Related Offenses

45-6-301. Theft.
45-6-302. Theft of lost or mislaid property.
45-6-303. Offender's interest in the property.
45-6-304. Effect of possession of stolen property.
45-6-305. Theft of labor or services or use of property.
45-6-306. Obtaining communication services with intent to defraud.
45-6-307. Aiding the avoidance of telecommunications charges.
45-6-308. Unauthorized use of motor vehicles.
45-6-309. Failure to return rented or leased personal property.
45-6-310. Definition — computer use.
45-6-311. Unlawful use of a computer.
45-6-312. Unauthorized acquisition or transfer of food stamps.
45-6-313 and 45-6-314 reserved.
45-6-315. Defrauding creditors.
45-6-316. Issuing a bad check.
45-6-317. Deceptive practices.
45-6-318. Deceptive business practices.
45-6-319. Chain distributor schemes.
45-6-320 through 45-6-324 reserved.
45-6-325. Forgery.

45-6-326. Obscuring the identity of a machine.
45-6-327. Illegal branding or altering or obscuring a brand.

Part 1

Criminal Mischief and Arson

45-6-101. Criminal mischief. (1) A person commits the offense of criminal mischief if he knowingly or purposely:

(a) injures, damages, or destroys any property of another or public property without consent;

(b) without consent tampers with property of another or public property so as to endanger or interfere with persons or property or its use;

(c) damages or destroys property with the purpose to defraud an insurer; or

(d) fails to close a gate previously unopened which he has opened, leading in or out of any enclosed premises. This does not apply to gates located in cities or towns.

(2) A person convicted of criminal mischief shall be ordered to make restitution in an amount and manner to be set by the court. The court shall determine the manner and amount of restitution after full consideration of the convicted person's ability to pay the same. Upon good cause shown by the convicted person, the court may modify any previous order specifying the amount and manner of restitution. Full payment of the amount of restitution ordered shall be made prior to the release of state jurisdiction over the person convicted.

(3) A person convicted of the offense of criminal mischief shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender commits the offense of criminal mischief and causes pecuniary loss in excess of $300, injures or kills a commonly domesticated hoofed animal, or causes a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public services, he shall be fined an amount not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

History: En. 94-6-102 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 88, L. 1975; R.C.M. 1947, 94-6-102; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 3, Ch. 560, L. 1981; amd. Sec. 1, Ch. 581, L. 1983.

Compiler's Comments

1983 Amendment: In (3), after "loss in excess of" changed "$150" to "$300".

1981 Amendments: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105,

45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Chapter 560 inserted subsection (2).

Cross-References

Injury to election equipment, materials, and records, 13-35-206.

Injury to property associated with funeral or interment, 35-21-704.

Definition of "knowingly", 45-2-101.

Definition of "property", 45-2-101.

Definition of "property of another", 45-2-101.

Definition of "purposely", 45-2-101.

Definition of "tamper", 45-2-101.

Definition of "value", 45-2-101.

Injury to water distribution system in irrigation district, 85-7-1924.

Duty of state conservation officers to enforce — where, 87-1-504.

Disturbance or theft of traps or trapped animals, 87-3-507.

45-6-102. Negligent arson. (1) A person commits the offense of negligent arson if he purposely or knowingly starts a fire or causes an explosion, whether on his own property or property of another, and thereby negligently:

(a) places another person in danger of death or bodily injury, including a firefighter responding to or at the scene of a fire or explosion; or

(b) places property of another in danger of damage or destruction.

(2) A person convicted of the offense of negligent arson shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender places another person in danger of death or bodily injury, he shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

History: En. 94-6-103 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-103; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 590, L. 1985.

Compiler's Comments

1985 Amendment: At end of (1)(a) inserted "including a firefighter responding to or at the scene of a fire or explosion".

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Definition of "bodily injury", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "property", 45-2-101.

Definition of "property of another", 45-2-101.

Definition of "purposely", 45-2-101.

Penalty for setting or leaving fire causing damage, 50-63-102.

Failure to extinguish campfire, 76-13-123.

45-6-103. Arson. (1) A person commits the offense of arson when, by means of fire or explosives, he knowingly or purposely:

(a) damages or destroys an occupied structure which is property of another without consent; or

(b) places another person in danger of death or bodily injury, including a firefighter responding to or at the scene of a fire or explosion.

(2) A person convicted of the offense of arson shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-6-104 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 261, L. 1975; R.C.M. 1947, 94-6-104; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 2, Ch. 590, L. 1985.

Compiler's Comments

1985 Amendment: At end of (1)(b) inserted "including a firefighter responding to or at the scene of a fire or explosion".

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Definition of "bodily injury", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "occupied structure", 45-2-101.

Definition of "purposely", 45-2-101.

Causal relationship between conduct and result, 45-2-201.

Definition of "without consent", 45-5-501.

Part 2

Criminal Trespass and Burglary

45-6-201. Definition of "enter or remain unlawfully". (1) A person enters or remains unlawfully in or upon any vehicle, occupied structure, or premises when he is not licensed, invited, or otherwise privileged to do so. Privilege to enter or remain upon land is extended either by the explicit permission of the landowner or other authorized person or by the failure of the landowner or other authorized person to post notice denying entry onto private land. Such privilege may be revoked at any time by personal communication of notice by the landowner or other authorized person to the entering person.

(2) To be effective under this section, the notice provided for in subsection (1) must satisfy the following requirements:

(a) notice must be placed on a post, structure, or natural object by marking it with written notice or with not less than 50 square inches of fluorescent orange paint, except that when metal fenceposts are used, the entire post must be painted; and

(b) the notice described in subsection (2)(a) must be placed at each outer gate and normal point of access to the property, including both sides of a water body crossing the property wherever the water body intersects an outer boundary line.

(3) If property has been posted in substantial compliance with subsection (2), it is considered closed to public access unless explicit permission to enter is given by the landowner or his authorized agent.

(4) The department of fish, wildlife, and parks shall attempt to educate and inform all persons holding hunting, fishing, or trapping licenses or permits by including on any publication concerning such licenses or permits, in condensed form, the provisions of this section concerning entry on private land. The department shall use public media, as well as its own publications, in attempting to educate and inform other recreational users of the provisions of this section.

(5) For purposes of this section, "land" means land as defined in 70-15-102.

(6) In no event shall civil liability be imposed upon the owner or occupier of premises by reason of any privilege created by this section.

History: En. 94-6-201 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 21, Ch. 359, L. 1977; R.C.M. 1947, 94-6-201; amd. Sec. 1, Ch. 599, L. 1985.

Compiler's Comments

1985 Amendment: In (1) deleted former second sentence that read: "A person who enters or remains upon land does so with privilege unless notice is personally communicated to him by an authorized person or unless such notice is given by posting in a conspicuous manner" and inserted second and third sentences; and inserted (2) through (5).

Cross-References

Definition of "knowingly", 45-2-101.
Definition of "occupied structure", 45-2-101.
Definition of "premises", 45-2-101.
Definition of "purposely", 45-2-101.
Definition of "vehicle", 45-2-101.

45-6-202. Criminal trespass to vehicles. (1) A person commits the offense of criminal trespass to vehicles when he purposely or knowingly and without authority enters any vehicle or any part thereof.

(2) A person convicted of the offense of criminal trespass to vehicles shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-6-202 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-202.

Cross-References

Definition of "knowingly", 45-2-101.
Definition of "purposely", 45-2-101.
Definition of "vehicle", 45-2-101.
Criminal mischief, 45-6-101.
Theft, 45-6-301.
Unauthorized use of motor vehicles, 45-6-308.

45-6-203. Criminal trespass to property. (1) A person commits the offense of criminal trespass to property if he knowingly:

(a) enters or remains unlawfully in an occupied structure; or

(b) enters or remains unlawfully in or upon the premises of another.

(2) A person convicted of the offense of criminal trespass to property shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-6-203 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-203.

Cross-References

Definition of "knowingly", 45-2-101.
Definition of "occupied structure", 45-2-101.
Definition of "premises", 45-2-101.
Definition of "enter or remain unlawfully", 45-6-201.
State conservation officers to enforce — where, 87-1-504.

45-6-204. Burglary. (1) A person commits the offense of burglary if he knowingly enters or remains unlawfully in an occupied structure with the purpose to commit an offense therein.

(2) A person commits the offense of aggravated burglary if he knowingly enters or remains unlawfully in an occupied structure with the purpose to commit a felony therein and:

(a) in effecting entry or in the course of committing the offense or in immediate flight thereafter, he or another participant in the offense is armed with explosives or a weapon; or

(b) in effecting entry or in the course of committing the offense or in immediate flight thereafter, he purposely, knowingly, or negligently inflicts or attempts to inflict bodily injury upon anyone.

(3) A person convicted of the offense of burglary shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both. A person convicted of the offense of aggravated burglary shall be imprisoned in the state prison for any term not to exceed 40 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-6-204 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 260, L. 1975; R.C.M. 1947, 94-6-204; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Definition of "bodily injury", 45-2-101.
Definition of "felony", 45-2-101.
Definition of "knowingly", 45-2-101.
Definition of "negligently", 45-2-101.
Definition of "occupied structure", 45-2-101.
Definition of "offense", 45-2-101.
Definition of "purpose", 45-2-101.
Definition of "weapon", 45-2-101.
Definition of "enter or remain unlawfully", 45-6-201.

45-6-205. Possession of burglary tools. (1) A person commits the offense of possession of burglary tools when he knowingly possesses any key, tool, instrument, device, or explosive suitable for breaking into an occupied structure or vehicle or any depository designed for the safekeeping of property or any part thereof with the purpose to commit an offense therewith.

(2) A person convicted of possession of burglary tools shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-6-205 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-205.

Cross-References

Definition of "knowingly", 45-2-101.
Definition of "occupied structure", 45-2-101.
Definition of "offense", 45-2-101.
Definition of "possession", 45-2-101.
Definition of "purpose", 45-2-101.
Definition of "vehicle", 45-2-101.

Part 3

Theft and Related Offenses

45-6-301. Theft. (1) A person commits the offense of theft when he purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when he purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when he purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(4) A person commits the offense of theft when he purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance provided under Title 53 by a state or county agency, regardless of the original source of assistance, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) a fraudulent scheme or device.

(5) A person convicted of the offense of theft of property not exceeding $300 in value shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of the offense of theft of property exceeding $300 in value or theft of any commonly domesticated hoofed animal shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

(6) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

History: En. 94-6-302 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 22, Ch. 359, L. 1977; R.C.M. 1947, 94-6-302; amd. Sec. 1, Ch. 374, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 2, Ch. 581, L. 1983; amd. Sec. 21, Ch. 670, L. 1985.

Compiler's Comments

1985 Amendment: In (4) substituted "provided under Title 53 by a state or county agency, regardless of the original source of assistance" for "as defined in 53-3-101".

1983 Amendment: In (5), increased the value from "$150" to "$300" in two places.

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Civil penalty for shoplifting, 27-1-718.

Fraudulent obtaining of unemployment benefits, 39-51-3203.

Definition of "deception", 45-2-101.

Definition of "deprive", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "obtains or exerts control", 45-2-101.

Definition of "owner", 45-2-101.

Definition of "property", 45-2-101.

Definition of "purposely", 45-2-101.

Definition of "stolen property", 45-2-101.

Definition of "threat", 45-2-101.

Definition of "value", 45-2-101.

Fraudulent obtaining of public assistance, 53-2-107.

Unlawful transportation of trees, 76-13-601.

Disturbance or theft of traps or trapped animals, 87-3-507.

45-6-302. Theft of lost or mislaid property. (1) A person who obtains control over lost or mislaid property commits the offense of theft when he:

(a) knows or learns the identity of the owner or knows, is aware of, or learns of a reasonable method of identifying the owner;

(b) fails to take reasonable measures to restore the property to the owner; and

(c) has the purpose of depriving the owner permanently of the use or benefit of the property.

(2) A person convicted of theft of lost or mislaid property shall be fined not to exceed $500 or be imprisoned in the county jail for a period not to exceed 6 months.

History: En. 94-6-303 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-303.

Cross-References

Definition of "knowledge", 45-2-101.

Definition of "obtains or exerts control", 45-2-101.

Definition of "owner", 45-2-101.

Definition of "property", 45-2-101.

Definition of "purposely", 45-2-101.

45-6-303. Offender's interest in the property. (1) It is no defense to a charge of theft of property that the offender has an interest therein when the owner also has an interest to which the offender is not entitled.

(2) It is no defense that theft was from the offender's spouse, except that misappropriation of household and personal effects or other property normally accessible to both spouses is theft only if it occurs after the parties have ceased living together.

History: En. 94-6-306 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-306.

Cross-References

Definition of "owner", 45-2-101.

Definition of "property", 45-2-101.

Theft, 45-6-301.

45-6-304. Effect of possession of stolen property. Possession of stolen property shall not constitute proof of the commission of the offense of theft. Such fact shall place a burden on the possessor to remove the effect of such fact as a circumstance to be considered with all other evidence pointing to his guilt.

History: **En. 94-6-314 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-314.**

Cross-References
Definition of "possession", 45-2-101.
Definition of "property", 45-2-101.
Definition of "stolen property", 45-2-101.

45-6-305. Theft of labor or services or use of property. (1) A person commits the offense of theft when he obtains the temporary use of property, labor, or services of another which are available only for hire, by means of threat or deception or knowing that such use is without the consent of the person providing the property, labor, or services.

(2) A person convicted of theft of labor or services or use of property shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: **En. 94-6-304 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-304.**

Cross-References
Definition of "deception", 45-2-101.
Definition of "obtain", 45-2-101.
Definition of "property", 45-2-101.
Definition of "threat", 45-2-101.
Theft, 45-6-301.

45-6-306. Obtaining communication services with intent to defraud. In a prosecution under 45-6-305 for theft of telephone, telegraph, or cable television services, the element of deception is established by proof that the defendant obtained such services by any of the following means:

(1) by use of a code, prearranged scheme, or other similar stratagem or device whereby said person, in effect, sends or receives information;

(2) by installing, rearranging, or tampering with any facilities or equipment, whether physically, inductively, acoustically, or electronically;

(3) by any other trick, stratagem, impersonation, false pretense, false representation, false statement, contrivance, device, or means; or

(4) by making, assembling, or possessing any instrument, apparatus, equipment, or device or the plans or instructions for the making or assembling of any instrument, apparatus, equipment, or device which is designed, adapted, or otherwise intended to be used to avoid the lawful charge, in whole or in part, for any telecommunications service by concealing the existence, place of origin, or destination of any telecommunications.

History: **En. 94-6-304.1 by Sec. 1, Ch. 156, L. 1974; amd. Sec. 1, Ch. 175, L. 1977; R.C.M. 1947, 94-6-304.1.**

Cross-References
Definition of "obtain", 45-2-101.
Definition of "tamper", 45-2-101.

45-6-307. Aiding the avoidance of telecommunications charges. (1) A person commits the offense of aiding the avoidance of telecommunications charges when he:

(a) publishes the number or code of an existing, canceled, revoked, expired, or nonexistent telephone credit card or the numbering or coding which is employed in the issuance of credit cards with the purpose that it will be used to avoid the payment of lawful telecommunications charges;

(b) publishes, advertises, sells, gives, or otherwise transfers to another plans or instructions for the making or assembling of any apparatus, instrument, equipment, or device described in 45-6-306(4) with the purpose that such will be used or with the knowledge or reason to believe that such will be used to avoid the payment of lawful telecommunications charges; or

(c) manufactures, assembles, possesses, sells, gives, or otherwise transfers any apparatus, instrument, equipment, or device described in 45-6-306(4) with the purpose that it will be used to avoid the payment of lawful telecommunications charges.

(2) A person convicted of the offense of aiding the avoidance of telecommunications charges shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) For the purposes of this section, the term "publish" means to communicate information to any one or more persons, either orally; in person; by telephone, radio, or television; or in a writing of any kind, including but not limited to a letter, memorandum, circular, handbill, newspaper or magazine article, or book.

History: En. 94-6-304.2 by Sec. 2, Ch. 175, L. 1977; R.C.M. 1947, 94-6-304.2; amd. Sec. 1, Ch. 282, L. 1979.

45-6-308. Unauthorized use of motor vehicles. (1) A person commits the offense of unauthorized use of motor vehicles if he knowingly operates the automobile, airplane, motorcycle, quadricycle, motorboat, or other motor-propelled vehicle of another without his consent.

(2) A person convicted of unauthorized use of motor vehicles shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. It is an affirmative defense that the offender reasonably believed that the owner would have consented to the operation had he known of it.

History: En. 94-6-305 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-305; amd. Sec. 14, Ch. 516, L. 1985.

Compiler's Comments

1985 Amendment: In (1) after "motorcycle", inserted "quadricycle" (effective January 1, 1986).

Cross-References

Definition of "knowingly", 45-2-101.
Definition of "vehicle", 45-2-101.
Motor Vehicles, Title 61.
"Motorcycle" defined, 61-1-105.
"Quadricycle" defined, 61-1-133.

45-6-309. Failure to return rented or leased personal property. (1) A person commits the offense of failure to return rented or leased personal property if, without notice to and permission of the lessor, he purposely and knowingly fails to return such property within 48 hours after the time provided for such return in the rental agreement, provided that clear written notice, in bold print, of the date and time when return of the property is required and of the penalty prescribed in this section is stated in the rental or lease agreement.

(2) Presentation to the lessor by the lessee of identification that is false for the purpose of obtaining a rental or lease agreement constitutes prima facie evidence of commission of the offense.

(3) After the rental or lease period specified in the rental or lease agreement has expired, failure to return rented or leased personal property within 72 hours of written demand by the lessor, sent by certified mail to the renter or lessee at the address given at the time of entering the rental or lease agreement, constitutes prima facie evidence of commission of the offense.

(4) (a) A person convicted of failure to return rented or leased personal property not exceeding $300 in value shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) A person convicted of failure to return rented or leased personal property exceeding $300 in value shall be imprisoned in the state prison for a term not to exceed 10 years.

History: En. Sec. 1, Ch. 239, L. 1981; amd. Sec. 3, Ch. 581, L. 1983.

Compiler's Comments

1983 Amendment: In (4)(a) and (4)(b), after "exceeding" changed "$150" to "$300".

45-6-310. Definition — computer use. As used in 45-6-311, the term "obtain the use of" means to instruct, communicate with, store data in, retrieve data from, cause input to, cause output from, or otherwise make use of any resources of a computer, computer system, or computer network or to cause another to instruct, communicate with, store data in, retrieve data from, cause input to, cause output from, or otherwise make use of any resources of a computer, computer system, or computer network.

History: En. Sec. 2, Ch. 485, L. 1981.

45-6-311. Unlawful use of a computer. (1) A person commits the offense of unlawful use of a computer if he knowingly or purposely:

(a) obtains the use of any computer, computer system, or computer network without consent of the owner;

(b) alters or destroys or causes another to alter or destroy a computer program or computer software without consent of the owner; or

(c) obtains the use of or alters or destroys a computer, computer system, computer network, or any part thereof as part of a deception for the purpose of obtaining money, property, or computer services from the owner of the computer, computer system, computer network, or part thereof or from any other person.

(2) A person convicted of the offense of unlawful use of a computer involving property not exceeding $300 in value shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of the offense of unlawful use of a computer involving property exceeding $300 in value shall be fined not more than 2 ½ times the value of the property used, altered, destroyed, or obtained or be imprisoned in the state prison for a term not to exceed 10 years, or both.

History: En. Sec. 3, Ch. 485, L. 1981; amd. Sec. 4, Ch. 581, L. 1983.

Compiler's Comments

1983 Amendment: In (2), in first and second sentences, after "exceeding" changed "$150" to "$300".

45-6-312. Unauthorized acquisition or transfer of food stamps. (1) A person commits the offense of unauthorized acquisition or transfer of food stamps if he knowingly:

(a) acquires, purchases, possesses, or uses any food stamp or coupon that he is not entitled to; or

(b) transfers, sells, trades, gives, or otherwise disposes of any food stamp or coupon to another person not entitled to receive or use it.

(2) A person convicted of an offense under this section shall be fined not more than $500 or be imprisoned in the county jail for not more than 6 months, or both. A person convicted of an offense under this section, which offense is part of a common scheme or in which the value of the food stamps exceeds $150, shall be fined not more than $50,000 or be imprisoned in the state prison for not more than 10 years, or both.

(3) As used in this section, "food stamp or coupon" means any stamp, coupon, or type of certification provided for the purchase of eligible food pursuant to the Food Stamp Act of 1977, 7. U.S.C. 2011 through 2029, or any similar public assistance program.

History: En. Sec. 1, Ch. 87, L. 1983.

Cross-References

"Common scheme" defined, 45-2-101.

45-6-313 and 45-6-314 reserved.

45-6-315. Defrauding creditors. (1) A person commits the offense of defrauding secured creditors if he destroys, conceals, encumbers, transfers, removes from the state, or otherwise deals with property subject to a security interest with the purpose to hinder enforcement of that interest.

(2) "Security interest" means an interest in personal property or fixtures as defined in the Uniform Commercial Code (30-1-201(37)).

(3) A person convicted of the offense of defrauding secured creditors shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(4) A person who destroys, conceals, encumbers, transfers, removes from the state, or otherwise deals with property subject to a security interest with the purpose of depriving the owner of the property or of the proceeds and value therefrom may be prosecuted under 45-6-301.

History: En. 94-6-313 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 367, L. 1975; R.C.M. 1947, 94-6-313.

Cross-References

Definition of "security interest", 30-1-201.

Definition of "property", 45-2-101.

Definition of "purpose", 45-2-101.

Criminal responsibility of corporation, 45-2-311.

45-6-316. Issuing a bad check. (1) A person commits the offense of issuing a bad check when he issues or delivers a check or other order upon a real or fictitious depository for the payment of money knowing that it will not be paid by the depository.

(2) If the offender has an account with the depository, failure to make good the check or other order within 5 days after written notice of nonpayment has been received by the issuer is prima facie evidence that he knew that it would not be paid by the depository.

(3) A person convicted of issuing a bad check shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender has engaged in issuing bad checks which are part of a common scheme or if the value of any property, labor, or services obtained or attempted to be obtained exceeds $300, he shall be fined not to exceed

$50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

History: En. 94-6-309 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-309; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 5, Ch. 581, L. 1983; amd. Sec. 1, Ch. 383, L. 1985.

Compiler's Comments

1985 Amendment: Near middle of (1) after "when", deleted "with the purpose of obtaining control over property or to secure property, labor, or services of another".

1983 Amendment: In (3), in second sentence, after "exceeds" changed "$150" to "$300".

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Treble damages for issuing bad check, 27-1-717.

Definition of "common scheme", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "property", 45-2-101.

Definition of "value", 45-2-101.

45-6-317. Deceptive practices. (1) A person commits the offense of deceptive practices when he purposely or knowingly:

(a) causes another, by deception or threat, to execute a document disposing of property or a document by which a pecuniary obligation is incurred;

(b) makes or directs another to make a false or deceptive statement addressed to the public or any person for the purpose of promoting or procuring the sale of property or services;

(c) makes or directs another to make a false or deceptive statement to any person respecting his financial condition for the purpose of procuring a loan or credit or accepts a false or deceptive statement from any person who is attempting to procure a loan or credit regarding that person's financial condition; or

(d) obtains or attempts to obtain property, labor, or services by any of the following means:

(i) using a credit card which was issued to another without the other's consent;

(ii) using a credit card that has been revoked or canceled;

(iii) using a credit card that has been falsely made, counterfeited, or altered in any material respect;

(iv) using the pretended number or description of a fictitious credit card;

(v) using a credit card which has expired provided the credit card clearly indicates the expiration date.

(2) A person convicted of the offense of deceptive practices shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both. If the deceptive practices are part of a common scheme

or the value of any property, labor, or services obtained or attempted to be obtained exceeds $300, the offender shall be fined not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

History: En. 94-6-307 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 23, Ch. 359, L. 1977; R.C.M. 1947, 94-6-307; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 6, Ch. 581, L. 1983.

Compiler's Comments

1983 Amendment: In (2), in second sentence after "exceeds" changed "$150" to "$300".

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Applicability of Real Estate License Act, 37-51-104.

Definition of "deception", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "property", 45-2-101.

Definition of "purposely", 45-2-101.

Definition of "threat", 45-2-101.

Criminal responsibility of corporation, 45-2-311.

45-6-318. Deceptive business practices. (1) A person commits the offense of deceptive business practices if in the course of engaging in a business, occupation, or profession he purposely or knowingly:

(a) uses or possesses for use a false weight or measure or any other device for falsely determining or recording any quality or quantity;

(b) sells, offers, exposes for sale, or delivers less than the represented quantity of any commodity or service;

(c) takes or attempts to take more than the represented quantity of any commodity or service when as buyer he furnished the weight or measure;

(d) sells, offers, or exposes for sale adulterated commodities;

(e) sells, offers, or exposes for sale mislabeled commodities; or

(f) makes a deceptive statement regarding the quantity or price of goods in any advertisement addressed to the public.

(2) "Adulterated" means varying from the standard of composition or quality prescribed by statute or lawfully promulgated administrative regulation or, if none, as set by established commercial usage.

(3) "Mislabeled" means:

(a) varying from the standard of truth or disclosure in labeling prescribed by statute or lawfully promulgated administrative regulation or, if none, as set by established commercial usage; or

(b) represented as being another person's produce though otherwise labeled accurately as to quality and quantity.

(4) A person convicted of the offense of deceptive business practices shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-6-308 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-308.

Cross-References

Applicability of Real Estate License Act, 37-51-104.

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

Criminal responsibility of corporation, 45-2-311.

45-6-319. Chain distributor schemes. (1) As used in this section, the following definitions apply:

(a) "Person" means a natural person, corporation, partnership, trust, or other entity; and in the case of an entity it shall include any other entity which has a majority interest in such entity or effectively controls such other entity as well as the individual officers, directors, and other persons in act of control of the activities of each entity.

(b) "Chain distributor scheme" means a sales device whereby a person, under a condition that he make an investment, is granted a license or right to recruit for consideration one or more additional persons who are also granted such license or right upon condition of making an investment and may further perpetuate the chain of persons who are granted such license or right upon such condition.

(2) It is unlawful for any person to promote, sell, or encourage participation in any chain distributor scheme.

(3) Any person violating the provisions of this section shall, upon conviction, be imprisoned in the state prison for a period not to exceed 1 year or fined not to exceed $1,000, or both.

(4) Any person convicted of a second offense under this section shall be imprisoned in the state prison for a period not to exceed 5 years or fined not to exceed $5,000, or both.

History: **En. Secs. 1 to 3, Ch. 465, L. 1973; amd. Sec. 24, Ch. 359, L. 1977; R.C.M. 1947, 94-6-308.1.**

45-6-320 through 45-6-324 reserved.

45-6-325. Forgery. (1) A person commits the offense of forgery when with purpose to defraud he knowingly:

(a) without authority makes or alters any document or other object apparently capable of being used to defraud another in such manner that it purports to have been made by another or at another time or with different provisions or of different composition;

(b) issues or delivers such document or other object knowing it to have been thus made or altered;

(c) possesses with the purpose of issuing or delivering any such document or other object knowing it to have been thus made or altered; or

(d) possesses with knowledge of its character any plate, die, or other device, apparatus, equipment, or article specifically designed for use in counterfeiting or otherwise forging written instruments.

(2) A purpose to defraud means the purpose of causing another to assume, create, transfer, alter, or terminate any right, obligation, or power with reference to any person or property.

(3) A document or other object capable of being used to defraud another includes but is not limited to one by which any right, obligation, or power with reference to any person or property may be created, transferred, altered, or terminated.

(4) A person convicted of the offense of forgery shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the forgery is part of a common scheme or if the value of the property, labor, or services obtained or attempted to be obtained exceeds $300, the offender shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 20 years, or both.

History: En. 94-6-310 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-310; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 7, Ch. 581, L. 1983.

Compiler's Comments

1983 Amendment: In (4), in second sentence after "exceeds" changed "$150" to "$300".

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Definition of "common scheme", 45-2-101.
Definition of "knowingly", 45-2-101.
Definition of "property", 45-2-101.
Definition of "purpose", 45-2-101.
Definition of "value", 45-2-101.

45-6-326. Obscuring the identity of a machine. (1) A person commits the offense of obscuring the identity of a machine if he:

(a) removes, defaces, covers, alters, destroys, or otherwise obscures the manufacturer's serial number or any other distinguishing identification number or mark upon any machine, vehicle, electrical device, or firearm with the purpose to conceal, misrepresent, or transfer any such machine, vehicle, electrical device, or firearm; or

(b) possesses with the purpose to conceal, misrepresent, or transfer any machine, vehicle, device, or firearm knowing that the serial number or other identification number or mark has been removed or otherwise obscured.

(2) A person convicted of obscuring the identity of a machine shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) The fact of possession or transfer of any such machine, vehicle, electrical device, or firearm creates a presumption that the person knew the serial number or other identification number or mark had been removed or otherwise obscured.

History: En. 94-6-311 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 167, L. 1977; R.C.M. 1947, 94-6-311.

Cross-References

Definition of "knowingly", 45-2-101.
Definition of "purposely", 45-2-101.
Definition of "vehicle", 45-2-101.
Criminal responsibility of corporations, 45-2-311.

45-6-327. Illegal branding or altering or obscuring a brand. (1) A person commits the offense of illegal branding or altering or obscuring a brand if he marks or brands any commonly domesticated hoofed animal or removes, covers, alters, or defaces any existing mark or brand on any commonly domesticated hoofed animal with the purpose to obtain or exert unauthorized control over said animal or with the purpose to conceal, misrepresent, transfer, or prevent identification of said animal.

(2) A person convicted of the offense of illegal branding or altering or obscuring a brand shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-6-312 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-312; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Definition of "obtains or exerts control", 45-2-101.

Definition of "purpose", 45-2-101.

Criminal responsibility of corporations, 45-2-311.

CHAPTER 7

OFFENSES AGAINST PUBLIC ADMINISTRATION

Part 1 — Bribery and Corrupt Influence

Section
45-7-101. Bribery in official and political matters.
45-7-102. Threats and other improper influence in official and political matters.
45-7-103. Compensation for past official behavior.
45-7-104. Gifts to public servants by persons subject to their jurisdiction.

Part 2 — Perjury and Other Falsification in Official Matters

45-7-201. Perjury.
45-7-202. False swearing.
45-7-203. Unsworn falsification to authorities.
45-7-204. False alarms to agencies of public safety.
45-7-205. False reports to law enforcement authorities.
45-7-206. Tampering with witnesses and informants.
45-7-207. Tampering with or fabricating physical evidence.
45-7-208. Tampering with public records or information.
45-7-209. Impersonating a public servant.
45-7-210. False claims to public agencies.

Part 3 — Obstructing Governmental Operations

45-7-301. Resisting arrest.

45-7-302. Obstructing a peace officer or other public servant.
45-7-303. Obstructing justice.
45-7-304. Failure to aid a peace officer.
45-7-305. Compounding a felony.
45-7-306. Escape.
45-7-307. Transferring illegal articles or unauthorized communication.
45-7-308. Bail-jumping.
45-7-309. Criminal contempt.

Part 4 — Official Misconduct

45-7-401. Official misconduct.

Part 1

Bribery and Corrupt Influence

45-7-101. Bribery in official and political matters. (1) A person commits the offense of bribery if he purposely or knowingly offers, confers, or agrees to confer upon another or solicits, accepts, or agrees to accept from another:

(a) any pecuniary benefit as a consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(b) any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding; or

(c) any benefit as consideration for a violation of a known duty as a public servant or party official.

(2) It is no defense to prosecution under this section that a person whom the offender sought to influence was not qualified to act in the desired way whether because he had not yet assumed office or lacked jurisdiction or for any other reason.

(3) A person convicted of the offense of bribery shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both, and shall forever be disqualified from holding any public office in this state.

History: En. 94-7-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-102; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317,

45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Election and campaign practices and criminal provisions, Title 13, ch. 35.

Definition of "administrative proceeding", 45-2-101.

Definition of "benefit", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "party official", 45-2-101.

Definition of "pecuniary benefit", 45-2-101.

Definition of "public servant", 45-2-101.

Definition of "purpose", 45-2-101.

Definition of "solicit", 45-2-101.

Improperly influencing grain inspector, sampler, or weigher, 80-4-703.

45-7-102. Threats and other improper influence in official and political matters. (1) A person commits an offense under this section if he purposely or knowingly:

(a) threatens unlawful harm to any person with the purpose to influence his decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(b) threatens harm to any public servant with the purpose to influence his decision, opinion, recommendation, vote, or other exercise of discretion in a judicial or administrative proceeding;

(c) threatens harm to any public servant or party official with the purpose to influence him to violate his duty;

(d) privately addresses to any public servant who has or will have official discretion in a judicial or administrative proceeding any representation, entreaty, argument, or other communication designed to influence the outcome on the basis of considerations other than those authorized by law; or

(e) as a juror or officer in charge of a jury receives or permits to be received any communication relating to any matter pending before such jury, except according to the regular course of proceedings.

(2) It is no defense to prosecution under subsections (1)(a) through (1)(d) that a person whom the offender sought to influence was not qualified to act in the desired way, whether because he had not yet assumed office or lacked jurisdiction or for any other reason.

(3) A person convicted under this section shall be fined not to exceed $500 or imprisoned in the county jail for any term not to exceed 6 months, or both, unless the offender threatened to commit an offense or made a threat with the purpose to influence a judicial or administrative proceeding, in which case the offender shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

History: En. 94-7-103 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 25, Ch. 359, L. 1977; R.C.M. 1947, 94-7-103; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505,

45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Election and campaign practices and criminal provisions, Title 13, ch. 35.

Definition of "administrative proceeding", 45-2-101.

Definition of "party official", 45-2-101.

Definition of "public servant", 45-2-101.

Definition of "purpose", 45-2-101.

Definition of "threat", 45-2-101.

Intimidation, 45-5-203.

45-7-103. Compensation for past official behavior. (1) A person commits an offense under this section if he knowingly solicits, accepts, or agrees to accept any pecuniary benefit as compensation for having, as a public servant, given a decision, opinion, recommendation, or vote favorable to another, for having otherwise exercised a discretion in another's favor, or for having violated his duty. A person commits an offense under this section if he knowingly offers, confers, or agrees to confer compensation which is prohibited by this section.

(2) A person convicted under this section shall be fined not to exceed $500 or imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-104 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 26, Ch. 359, L. 1977; R.C.M. 1947, 94-7-104.

Cross-References

Definition of "administrative proceeding", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "pecuniary benefit", 45-2-101.

Definition of "public servant", 45-2-101.

Definition of "solicit", 45-2-101.

45-7-104. Gifts to public servants by persons subject to their jurisdiction. (1) No public servant in any department or agency exercising regulatory function, conducting inspections or investigations, carrying on a civil or criminal litigation on behalf of the government, or having custody of prisoners shall solicit, accept, or agree to accept any pecuniary benefit from a person known to be subject to such regulation, inspection, investigation, or custody or against whom such litigation is known to be pending or contemplated.

(2) No public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims, or other pecuniary transactions of the government shall solicit, accept, or agree to accept any pecuniary benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim, or transaction.

(3) No public servant having judicial or administrative authority and no public servant employed by or in a court or other tribunal having such authority or participating in the enforcement of its decision shall solicit, accept, or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before such public servant or tribunal with which he is associated.

(4) No legislator or public servant employed by the legislature or by any committee or agency thereof shall solicit, accept, or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before the legislature or any committee or agency thereof.

(5) This section shall not apply to:

(a) fees prescribed by law to be received by a public servant or any other benefit for which the recipient gives legitimate consideration or to which he is otherwise entitled; or

(b) trivial benefits incidental to personal, professional, or business contacts and involving no substantial risk of undermining official impartiality.

(6) No person shall knowingly confer or offer or agree to confer any benefit prohibited by subsections (1) through (5).

(7) A person convicted of an offense under this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-105 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-105.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "pecuniary benefit", 45-2-101.

Definition of "public servant", 45-2-101.

Definition of "solicit", 45-2-101.

Part 2

Perjury and Other Falsification in Official Matters

45-7-201. Perjury. (1) A person commits the offense of perjury if in any official proceeding he knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of a statement previously made, when the statement is material.

(2) A person convicted of perjury shall be punished by imprisonment in the state prison for any term not to exceed 10 years or shall be punished by a fine of not more than $50,000, or by both such fine and imprisonment.

(3) Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law.

(4) It is not a defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made upon oath or affirmation at any time when the offender presents it as being so verified shall be deemed to have been duly sworn or affirmed.

(5) No person shall be guilty of an offense under this section if he retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

(6) Where the defendant made inconsistent statements under oath or equivalent affirmation, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant. In such case it shall not be necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true.

(7) No person shall be convicted of an offense under this section where proof of falsity rests solely upon the testimony of a single person other than the defendant.

History: **En. 94-7-202 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-202; amd. Sec. 7, Ch. 198, L. 1981.**

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

General time limitations, 45-1-205.

Periods excluded from limitation, 45-1-206.

Definition of "knowingly", 45-2-101.

Definition of "offense", 45-2-101.

Definition of "official proceeding", 45-2-101.

45-7-202. False swearing. (1) A person commits the offense of false swearing if he knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of such a statement previously made when he does not believe the statement to be true and:

(a) the falsification occurs in an official proceeding;

(b) the falsification is purposely made to mislead a public servant in performing his official function; or

(c) the statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.

(2) Subsections (4) to (7) of 45-7-201 apply to this section.

(3) A person convicted of false swearing shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: **En. 94-7-203 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-203.**

Cross-References

Deceptive election practices, 13-35-207.

Application for certain property classifications, 15-6-151.

False affirmation in response to elector challenge, 20-20-303.

Assumed business name filings — false swearing, 30-13-218.

Trademark filings — false swearing, 30-13-319.

Business corporation filings — false swearing, 35-1-412.

Definition of "knowingly", 45-2-101.

Definition of "official proceeding", 45-2-101.

Definition of "public servant", 45-2-101.

Definition of "purposely", 45-2-101.

False information in driver's license application, 61-5-303.

Aircraft registration violations, 67-3-202.

False statement that public officer is not enforcing Montana Strip and Underground Mine Siting Act, 82-4-142.

False statement that public officer is not enforcing Montana Strip and Underground Mine Reclamation Act, 82-4-252.

Affidavit stating metal mine reclamation law is not being enforced, 82-4-354.

45-7-203. Unsworn falsification to authorities. (1) A person commits an offense under this section if, with purpose to mislead a public servant in performing his official function, he:

(a) makes any written false statement which he does not believe to be true;

(b) purposely creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements therein from being misleading;

(c) submits or invites reliance on any writing which he knows to be forged, altered, or otherwise lacking in authenticity; or

(d) submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he knows to be false.

(2) A person convicted of an offense under this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: **En. 94-7-204 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-204.**

Cross-References

Falsified petition for recall of a state-district officer, 2-16-612.

False report by employer of lobbyist, 5-7-209.

False entry upon a petition for ballot issue, 13-27-106.

Deceptive election practices, 13-35-207.

False statement to obtain unemployment benefits, 39-51-3202.

Definition of "benefit", 45-2-101.

Definition of "pecuniary benefit", 45-2-101.

Definition of "public servant", 45-2-101.

Definition of "purpose", 45-2-101.

45-7-204. False alarms to agencies of public safety. (1) A person commits an offense under this section if he knowingly causes a false alarm of fire or other emergency to be transmitted to or within any organization, official or volunteer, which deals with emergencies involving danger to life or property.

(2) A person convicted of an offense under this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: **En. 94-7-205 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-205.**

Cross-References

Definition of "knowingly", 45-2-101.

Intimidation, 45-5-203.

45-7-205. False reports to law enforcement authorities. (1) A person commits an offense under this section if he knowingly:

(a) gives false information to any law enforcement officer with the purpose to implicate another;

(b) reports to law enforcement authorities an offense or other incident within their concern knowing that it did not occur; or

(c) pretends to furnish such authorities with information relating to an offense or incident when he knows he has no information relating to such offense or incident.

(2) A person convicted under this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: **En. 94-7-206 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-206.**

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "offense", 45-2-101.

45-7-206. Tampering with witnesses and informants. (1) A person commits the offense of tampering with witnesses and informants if, believing that an official proceeding or investigation is pending or about to be instituted, he purposely or knowingly attempts to induce or otherwise cause a witness or informant to:

(a) testify or inform falsely;

(b) withhold any testimony, information, document, or thing;

(c) elude legal process summoning him to testify or supply evidence; or

(d) absent himself from any proceeding or investigation to which he has been summoned.

(2) A person convicted of tampering with witnesses or informants shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-7-207 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 27, Ch. 359, L. 1977; R.C.M. 1947, 94-7-207; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "official proceeding", 45-2-101.

Definition of "purposely", 45-2-101.

Definition of "witness", 45-2-101.

45-7-207. Tampering with or fabricating physical evidence. (1) A person commits the offense of tampering with or fabricating physical evidence if, believing that an official proceeding or investigation is pending or about to be instituted, he:

(a) alters, destroys, conceals, or removes any record, document, or thing with purpose to impair its verity or availability in such proceeding or investigation; or

(b) makes, presents, or uses any record, document, or thing knowing it to be false and with purpose to mislead any person who is or may be engaged in such proceeding or investigation.

(2) A person convicted of tampering with or fabricating physical evidence shall be imprisoned in the state prison for a term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-7-208 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-208; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "official proceeding", 45-2-101.

Definition of "purposely", 45-2-101.

45-7-208. Tampering with public records or information. (1) A person commits the offense of tampering with public records or information if he:

(a) knowingly makes a false entry in or false alteration of any record, document, legislative bill or enactment, or thing belonging to or received, issued, or kept by the government for information or record or required by law to be kept by others for information of the government;

(b) makes, presents, or uses any record, document, or thing knowing it to be false and with purpose that it be taken as a genuine part of information or records referred to in subsection (1)(a); or

(c) purposely destroys, conceals, removes, or otherwise impairs the verity or availability of any such record, document, or thing.

(2) A person convicted of the offense of tampering with public records or information shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-7-209 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-209; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Tampering with petition for recall of a state-district officer, 2-16-612.

Tampering with petition for ballot issue, 13-27-106.

Tampering with election records and information, 13-35-205.

Tampering with election equipment, 13-35-206.

Deceptive election practices, 13-35-207.

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

45-7-209. Impersonating a public servant. (1) A person commits the offense of impersonating a public servant if he falsely pretends to hold a position in the public service with purpose to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to his prejudice.

(2) A person convicted of impersonating a public servant shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-210 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-210.

Cross-References

Definition of "acts", 45-2-101.

Definition of "public servant", 45-2-101.

Definition of "purposely", 45-2-101.

45-7-210. False claims to public agencies. (1) A person commits an offense under this section if he purposely and knowingly presents for allowance or for payment any false or fraudulent claim, bill, account, voucher, or writing to any public agency, public servant, or contractor authorized to allow or pay claims presented to public agencies if genuine.

(2) (a) Except as provided in subsection (2)(b), a person convicted of an offense under this section shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) If false or fraudulent claims are submitted purposely and knowingly as part of a common scheme or if the value of the claim or the aggregate value of all claims exceeds $300, a person convicted of an offense under this section shall be fined not to exceed $10,000 or imprisoned in the state prison for a term not to exceed 10 years, or both.

History: En. Sec. 1, Ch. 151, L. 1981; amd. Sec. 8, Ch. 581, L. 1983.

Compiler's Comments

1983 Amendment: In (2)(b), after "exceeds" changed "$150" to "$300".

Cross-References

Civil penalty for filing false claim, 17-8-231.

Fraudulent act by public contractor, 37-71-301.

Part 3

Obstructing Governmental Operations

45-7-301. Resisting arrest. (1) A person commits the offense of resisting arrest if he knowingly prevents or attempts to prevent a peace officer from effecting an arrest by:

(a) using or threatening to use physical force or violence against the peace officer or another; or

(b) using any other means which creates a risk of causing physical injury to the peace officer or another.

(2) It is no defense to a prosecution under this section that the arrest was unlawful, provided the peace officer was acting under color of his official authority.

(3) A person convicted of the offense of resisting arrest shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-301 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-301.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "peace officer", 45-2-101.

Definition of "threat", 45-2-101.

Use of force in defense of person, 45-3-102.
Use of force in resisting arrest, 45-3-108.
Method of arrest, 46-6-104.
Manner of arrest without a warrant, 46-6-106.

45-7-302. Obstructing a peace officer or other public servant. (1) A person commits the offense of obstructing a peace officer or public servant if he knowingly obstructs, impairs, or hinders the enforcement of the criminal law, the preservation of the peace, or the performance of a governmental function.

(2) It is no defense to a prosecution under this section that the peace officer was acting in an illegal manner, provided he was acting under color of his official authority.

(3) A person convicted of the offense of obstructing a peace officer or other public servant shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-302 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-302.

Cross-References

Definition of "public servant", 7-1-4138, 45-2-101.
Interference with election officials, 13-35-203.
Definition of "knowingly", 45-2-101.
Definition of "peace officer", 45-2-101.
Interference with commissioners of irrigation district, 85-7-1924.

45-7-303. Obstructing justice. (1) For the purpose of this section "an offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(2) A person commits the offense of obstructing justice if, knowing a person is an offender, he purposely:

(a) harbors or conceals an offender;

(b) warns an offender of impending discovery or apprehension, except this does not apply to a warning given in connection with an effort to bring an offender into compliance with the law;

(c) provides an offender with money, transportation, weapon, disguise, or other means of avoiding discovery or apprehension;

(d) prevents or obstructs by means of force, deception, or intimidation anyone from performing an act that might aid in the discovery or apprehension of an offender;

(e) suppresses by act of concealment, alteration, or destruction any physical evidence that might aid in the discovery or apprehension of an offender; or

(f) aids an offender who is subject to official detention to escape from such official detention.

(3) A person convicted of obstructing justice shall be:

(a) imprisoned in the state prison for a term not to exceed 10 years if the offender has been or is liable to be charged with a felony; or

(b) fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both, if the offender has been or is liable to be charged with a misdemeanor.

History: En. 94-7-303 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-303.

Cross-References

Definition of "knowingly", 45-2-101.
Definition of "offender", 45-2-101.
Definition of "official detention", 45-2-101.
Definition of "purposely", 45-2-101.

45-7-304. Failure to aid a peace officer. (1) A peace officer may order a person to cooperate where it is reasonable for the peace officer to enlist the cooperation of such person in:

(a) effectuating or securing an arrest of another pursuant to 46-6-402; or

(b) preventing the commission by another of an offense.

(2) A person commits the offense of failure to aid a peace officer if he knowingly refuses to obey such an order.

(3) A person convicted of the offense of failure to aid a peace officer shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-304 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-304.

Cross-References

Definition of "another", 45-2-101.

Definition of "offense", 45-2-101.

Definition of "peace officer", 45-2-101.

45-7-305. Compounding a felony. (1) A person commits the offense of compounding a felony if he knowingly accepts or agrees to accept any pecuniary benefit in consideration for:

(a) refraining from seeking prosecution of a felony; or

(b) refraining from reporting to law enforcement authorities the commission or suspected commission of any felony or information relating to a felony.

(2) A person convicted of compounding a felony shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-305 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-305.

Cross-References

Definition of "felony", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "misdemeanor", 45-2-101.

Bribery in official and political matters, 45-7-101.

Gifts to public servants by person subject to their jurisdiction, 45-7-104.

45-7-306. Escape. (1) "Official detention" means imprisonment which resulted from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, supervision while under a supervised release program, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. "Official detention" does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(2) A person subject to official detention commits the offense of escape if he knowingly or purposely removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited time.

(3) A person convicted of the offense of escape shall be:

(a) imprisoned in the state prison for a term not to exceed 20 years if he escapes from a state prison, county jail, city jail, or supervised release program by the use or threat of force, physical violence, weapon, or simulated weapon;

(b) imprisoned in the state prison for a term not to exceed 10 years if he:

(i) escapes from a state prison, county jail, city jail, halfway house, life skills center, or supervised release program; or

(ii) escapes from another official detention by the use or threat of force, physical violence, weapon, or simulated weapon; or

(c) fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both, if he commits escape under circumstances other than (a) and (b) of this subsection.

History: En. 94-7-306 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-306; amd. Sec. 1, Ch. 72, L. 1981; amd. Sec. 8, Ch. 583, L. 1981.

Compiler's Comments

1981 Amendments — Composite: Chapter 72 inserted "halfway house, life skills center, or furlough placement" in (3)(b)(i).

Chapter 583 added "supervision while under a supervised release program" to the list of methods of constraint that mean "official detention" in (1); and added "supervised release program" to (3)(a) and (3)(b)(i).

In preparing the composite of the Ch. 72 and Ch. 583 amendments to this section, the Code Commissioner chose the term "supervised release program" over "furlough placement" in (3)(b)(i) in order to conform to the intent of Ch. 583, which redefined the prisoner furlough program as the supervised release program.

Cross-References

Definition of "knowingly", 45-2-101.
Definition of "offense", 45-2-101.
Definition of "official detention", 45-2-101.
Definition of "peace officer", 45-2-101.
Definition of "purposely", 45-2-101.
Definition of "threat", 45-2-101.
Definition of "weapon", 45-2-101.
Resisting arrest, 45-7-301.
Escape while on prisoner furlough program, 46-23-426.
Expense of trial for offenses committed in prison, 53-30-110.

45-7-307. Transferring illegal articles or unauthorized communication. (1) (a) A person commits the offense of transferring illegal articles if he knowingly or purposely transfers any illegal article or thing to a person subject to official detention or is transferred any illegal article or thing by a person subject to official detention.

(b) A person convicted of transferring illegal articles shall be:

(i) imprisoned in the state prison for a term not to exceed 20 years, if he conveys a weapon to a person subject to official detention; or

(ii) fined not to exceed $100 or imprisoned in the county jail for any term not to exceed 10 days, or both, if he conveys any other illegal article or thing to a person subject to official detention.

(c) Subsection (1)(b)(ii) does not apply unless the offender knew or was given sufficient notice so that he reasonably should have known that the article or thing he conveyed was an illegal article.

(2) (a) A person commits the offense of unauthorized communication if he knowingly or purposely communicates with a person subject to official detention without the consent of the person in charge of such official detention.

(b) A person convicted of the offense of unauthorized communication shall be fined not to exceed $100 or imprisoned in the county jail for any term not to exceed 10 days, or both.

History: En. 94-7-307 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 28, Ch. 359, L. 1977; R.C.M. 1947, 94-7-307.

Cross-References

Definition of "knowingly", 45-2-101.
Definition of "official detention", 45-2-101.
Definition of "purposely", 45-2-101.
Definition of "weapon", 45-2-101.

45-7-308. Bail-jumping. (1) A person commits the offense of bail-jumping if, having been set at liberty by court order, with or without security, upon condition that he will subsequently appear at a specified time and place, he purposely fails without lawful excuse to appear at that time and place.

(2) This section shall not interfere with the exercise by any court of its power to punish for contempt.

(3) This section shall not apply to a person set at liberty by court order upon condition that he will appear in connection with a charge of having committed a misdemeanor, except it shall apply where the judge has released the defendant on his own recognizance.

(4) A person convicted of bail-jumping in connection with a felony shall be imprisoned in the state prison for a term not to exceed 10 years. In all other cases he shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-308 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-308.

Cross-References

Definition of "misdemeanor", 45-2-101.
Definition of "purposely", 45-2-101.
Escape, 45-7-306.
Bail, Title 46, ch. 9.

45-7-309. Criminal contempt. (1) A person commits the offense of criminal contempt when he knowingly engages in any of the following conduct:

(a) disorderly, contemptuous, or insolent behavior committed during the sitting of a court in its immediate view and presence and directly tending to interrupt its proceedings or to impair the respect due to its authority;

(b) breach of the peace, noise, or other disturbance directly tending to interrupt a court's proceeding;

(c) purposely disobeying or refusing any lawful process or other mandate of a court;

(d) unlawfully refusing to be sworn as a witness in any court proceeding or, after being sworn, refusing to answer any legal and proper interrogatory;

(e) purposely publishing a false or grossly inaccurate report of a court's proceeding; or

(f) purposely failing to obey any mandate, process, or notice relative to juries issued pursuant to Title 3, chapter 15.

(2) A person convicted of the offense of criminal contempt shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-309 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-309.

Cross-References

Definition of "knowingly", 45-2-101.
Definition of "purposely", 45-2-101.

Part 4

Official Misconduct

45-7-401. Official misconduct. (1) A public servant commits the offense of official misconduct when in his official capacity he commits any of the following acts:

(a) purposely or negligently fails to perform any mandatory duty as required by law or by a court of competent jurisdiction;

(b) knowingly performs an act in his official capacity which he knows is forbidden by law;

(c) with the purpose to obtain advantage for himself or another, performs an act in excess of his lawful authority;

(d) solicits or knowingly accepts for the performance of any act a fee or reward which he knows is not authorized by law; or

(e) knowingly conducts a meeting of a public agency in violation of 2-3-203.

(2) A public servant convicted of the offense of official misconduct shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) The district court shall have exclusive jurisdiction in prosecutions under this section. Any action for official misconduct must be commenced by an information filed after leave to file has been granted by the district court or after a grand jury indictment has been found.

(4) A public servant who has been charged as provided in subsection (3) may be suspended from his office without pay pending final judgment. Upon final judgment of conviction he shall permanently forfeit his office. Upon acquittal he shall be reinstated in his office and shall receive all backpay.

(5) This section does not affect any power conferred by law to impeach or remove any public servant or any proceeding authorized by law to carry into effect such impeachment or removal.

History: En. 94-7-401 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 474, L. 1975; R.C.M. 1947, 94-7-401.

Cross-References

Meetings of public agencies to be open to public — exceptions, 2-3-203.

Discharge of election law duties, 13-35-204.

Prosecution of Commissioner of Political Practices, 13-37-105.

Definition of "knowingly", 45-2-101.

Definition of "negligently", 45-2-101.

Definition of "public servant", 45-2-101.

Definition of "purposely", 45-2-101.

Bribery in official and political matters, 45-7-101.

Gifts to public servants by person subject to their jurisdiction, 45-7-104.

Employee disclosure of information which would identify patient, 50-5-106.

Removal of Public Service Commission member, 69-1-113.

Official misconduct of official grain inspector, sampler, or weigher, 80-4-703.

Violations by Commissioner of irrigation district, 85-7-1507.

CHAPTER 8

OFFENSES AGAINST PUBLIC ORDER

Part 1 — Conduct Disruptive of Public Order

Section

45-8-101. Disorderly conduct.
45-8-102. Failure of disorderly persons to disperse.
45-8-103. Riot.
45-8-104. Incitement to riot.
45-8-105. Criminal syndicalism.
45-8-106. Bringing armed men into the state.
45-8-107 through 45-8-110 reserved.
45-8-111. Public nuisance.
45-8-112. Action to abate a public nuisance.
45-8-113. Creating a hazard.
45-8-114. Failure to yield party line.

Part 2 — Offensive, Indecent, and Inhumane Conduct

45-8-201. Obscenity.

45-8-202. Public display of offensive material.
45-8-203. Certain motion picture theater employees not liable for prosecution.
45-8-204. Sale and advertisement of contraceptive drugs and devices.
45-8-205 through 45-8-208 reserved.
45-8-209. Harming a police dog — penalty.
45-8-210. Causing animals to fight — owners, trainers, and spectators — penalties — exception — definition.
45-8-211. Cruelty to animals.
45-8-212. Criminal defamation.
45-8-213. Privacy in communications.
45-8-214. Bribery in contests.
45-8-215. Desecration of flags.

Part 3 — Weapons

45-8-301. Uniformity of interpretation.
45-8-302. Definitions.
45-8-303. Possession or use of machine gun in connection with a crime.
45-8-304. Possession or use of machine gun for offensive purpose.
45-8-305. Presumption of offensive or aggressive purpose.
45-8-306. Presence of gun as evidence of possession or use.
45-8-307. Exceptions.
45-8-308. Manufacturer's register of machine guns.
45-8-309. Registration of machine guns — presumption from failure to register.
45-8-310 through 45-8-314 reserved.
45-8-315. Definition.
45-8-316. Carrying concealed weapons.
45-8-317. Exceptions.
45-8-318. Possession of deadly weapon by prisoner.
45-8-319. Permits to carry concealed weapons — records — revocation.
45-8-320. Repealed.
45-8-321 through 45-8-330 reserved.
45-8-331. Switchblade knives.
45-8-332. Definitions.
45-8-333. Reckless or malicious use of explosives.
45-8-334. Possession of a destructive device.
45-8-335. Possession of explosives.
45-8-336. Possession of a silencer.
45-8-337. Possession prima facie evidence of unlawful purpose.
45-8-338 through 45-8-340 reserved.
45-8-341. Purchase of rifle or shotgun in contiguous state by Montana resident.
45-8-342. Purchase of rifle or shotgun in Montana by resident of contiguous state.
45-8-343. Firing firearms.
45-8-344. Use of firearms by children under fourteen prohibited.
45-8-345. Criminal liability of parent or guardian — prosecution.
45-8-346 through 45-8-350 reserved.
45-8-351. Restriction on local government regulation of firearms.

Part 1

Conduct Disruptive of Public Order

45-8-101. Disorderly conduct. (1) A person commits the offense of disorderly conduct if he knowingly disturbs the peace by:

(a) quarreling, challenging to fight, or fighting;

(b) making loud or unusual noises;

(c) using threatening, profane, or abusive language;

(d) discharging firearms;

(e) rendering vehicular or pedestrian traffic impassable;

(f) rendering the free ingress or egress to public or private places impassable;

(g) disturbing or disrupting any lawful assembly or public meeting;

(h) transmitting a false report or warning of a fire, impending explosion, or other catastrophe in such a place that its occurrence would endanger human life; or

(i) creating a hazardous or physically offensive condition by any act that serves no legitimate purpose.

(2) A person convicted of the offense of disorderly conduct shall be fined not to exceed $100 or be imprisoned in the county jail for a term not to exceed 10 days, or both.

History: En. 94-8-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-101.

Cross-References

Motorboat noise limitation — violation as disorderly conduct, 23-2-526, 87-1-506.

Knowingly defined, 45-2-101.

45-8-102. Failure of disorderly persons to disperse. (1) Where two or more persons are engaged in disorderly conduct, a peace officer, judge, or mayor may order the participants to disperse. A person who purposely refuses or knowingly fails to obey such an order commits the offense of failure to disperse.

(2) A person convicted of the offense of failure to disperse shall be fined not to exceed $100 or be imprisoned in the county jail for a term not to exceed 10 days, or both.

History: En. 94-8-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-102.

Cross-References

Knowingly defined, 45-2-101.

Offense defined, 45-2-101.

Purposely defined, 45-2-101.

45-8-103. Riot. (1) A person commits the offense of riot if he purposely and knowingly disturbs the peace by engaging in an act of violence or threat to commit an act of violence as part of an assemblage of five or more persons, which act or threat presents a clear and present danger of or results in damage to property or injury to persons.

(2) Except as provided in subsection (3), a person convicted of the offense of riot shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) A person who commits the offense of riot by engaging in an act of violence while incarcerated at any state adult correctional facility or city or county jail shall be imprisoned for not less than 1 year or more than 5 years.

History: En. 94-8-103 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-103; amd. Sec. 1, Ch. 54, L. 1983.

Compiler's Comments

1983 Amendment: In (2), inserted proviso for (3); inserted (3).

Cross-References

Act defined, 45-2-101.

Knowingly defined, 45-2-101.

Purposely defined, 45-2-101.

Threat defined, 45-2-101.

Failure of disorderly persons to disperse, 45-8-102.

45-8-104. Incitement to riot. (1) A person commits the offense of incitement to riot if he purposely and knowingly commits an act or engages in conduct that urges other persons to riot. Such act or conduct shall not include the mere oral or written advocacy of ideas or expression of belief which advocacy or expression does not urge the commission of an act of immediate violence.

(2) Except as provided in subsection (3), a person convicted of the offense of incitement to riot shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) A person who commits the offense of incitement to riot while incarcerated at any state adult correctional facility shall be imprisoned for not less than 1 year or more than 5 years.

History: **En. 94-8-104 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-104; amd. Sec. 2, Ch. 54, L. 1983.**

Compiler's Comments

1983 Amendment: In (2), inserted proviso for (3); inserted (3).

Cross-References

Act defined, 45-2-101.
Knowingly defined, 45-2-101.
Purposely defined, 45-2-101.
Solicitation, 45-4-101.
Riot, 45-8-103.

45-8-105. Criminal syndicalism. (1) "Criminal syndicalism" means the advocacy of crime, malicious damage or injury to property, violence, or other unlawful methods of terrorism as a means of accomplishing industrial or political ends.

(2) A person commits the offense of criminal syndicalism if he purposely or knowingly:

(a) orally or by means of writing, advocates or promotes the doctrine of criminal syndicalism;

(b) organizes or becomes a member of any assembly, group, or organization which he knows is advocating or promoting the doctrine of criminal syndicalism; or

(c) for or on behalf of another whose purpose is to advocate or promote the doctrine of criminal syndicalism, distributes, sells, publishes, or publicly displays any writing advocating or advertising such doctrine.

(3) A person convicted of the offense of criminal syndicalism shall be imprisoned in the state prison for a term not to exceed 10 years.

(4) Whoever, being the owner or in possession or control of any premises, knowingly permits any assemblage of persons to use such premises for the purpose of advocating or promoting the doctrine of criminal syndicalism shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

History: **En. 94-7-503 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 29, Ch. 359, L. 1977; R.C.M. 1947, 94-7-503.**

Cross-References

Knowingly defined, 45-2-101.
Offense defined, 45-2-101.
Possession defined, 45-2-101.
Purposely defined, 45-2-101.

45-8-106. Bringing armed men into the state. (1) A person commits the offense of bringing armed men into the state when he knowingly brings or aids in bringing into this state an armed person or armed body of men for the purpose of engaging in criminal or socially disruptive activities or to usurp the powers of law enforcement authorities.

(2) A person convicted of the offense of bringing armed men into the state shall be imprisoned in the state prison for a term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-7-504 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-504; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Right to bear arms, Art. II, sec. 12, Mont. Const.

Treason, Art. II, sec. 30, Mont. Const.

Civilian control of the military, Art. II, sec. 32, Mont. Const.

Importation of armed persons, Art. II, sec. 33, Mont. Const.

Militia, Title 10, ch. 1.

Knowingly defined, 45-2-101.

Offense defined, 45-2-101.

45-8-107 through 45-8-110 reserved.

45-8-111. Public nuisance. (1) "Public nuisance" means:

(a) a condition which endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood or by any considerable number of persons;

(b) any premises where persons gather for the purpose of engaging in unlawful conduct; or

(c) a condition which renders dangerous for passage any public highway or right-of-way or waters used by the public.

(2) A person commits the offense of maintaining a public nuisance if he knowingly creates, conducts, or maintains a public nuisance.

(3) Any act which affects an entire community or neighborhood or any considerable number of persons (as specified in subsection (1)(a)) is no less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal.

(4) No agricultural or farming operation, place, establishment, or facility or any of its appurtenances or the operation thereof is or becomes a public nuisance because of the normal operation thereof as a result of changed residential or commercial conditions in or around its locality if the agricultural or farming operation, place, establishment, or facility has been in operation longer than the complaining resident has been in possession or commercial establishment has been in operation.

(5) A person convicted of maintaining a public nuisance shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both. Each day of such conduct constitutes a separate offense.

History: En. 94-8-107 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 30, Ch. 359, L. 1977; R.C.M. 1947, 94-8-107(1) thru (4); amd. Sec. 2, Ch. 123, L. 1981.

Compiler's Comments

1981 Amendment: Inserted subsection (4).

Cross-References

Liability for permitting irrigation water to overflow, 7-14-2141.

Selling liquor illegally on premises, 16-6-312.

Motorboat noise limitation — violation as public nuisance, 23-2-526, 87-1-506.

Nuisances, Title 27, ch. 30.

Mausoleum or columbarium constructed in violation of law, 35-21-712.

Knowingly defined, 45-2-101.

Property defined, 45-2-101.

45-8-112. Action to abate a public nuisance. (1) Every public nuisance may be abated and the persons maintaining such nuisance and the possessor of the premises who permits the same to be maintained may be enjoined from such conduct by an action in equity in the name of the state of Montana by the county attorney or any resident of the state.

(2) Upon the filing of the complaint in such action, the judge may issue a temporary injunction.

(3) In such action evidence of the general reputation of the premises is admissible for the purpose of proving the existence of the nuisance.

(4) If the existence of the nuisance is established, an order of abatement shall be entered as part of the judgment in the case. The judge issuing the order may, in his discretion:

(a) confiscate all fixtures used on the premises to maintain the nuisance and either sell them and transmit the proceeds to the county general fund, destroy them, or return them to their rightful ownership;

(b) close the premises for any period not to exceed 1 year, during which period the premises shall remain in the custody of the court;

(c) allow the premises to be opened upon posting bond sufficient in amount to assure compliance with the order of abatement. The bond shall be forfeited if the nuisance is continued or resumed. The procedure for forfeiture or discharge of the bond shall be as provided in 46-9-502 and 46-9-503; or

(d) any combination of the above.

History: En. 94-8-107 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 30, Ch. 359, L. 1977; R.C.M. 1947, 94-8-107(5).

Cross-References

Nuisance, Title 27, ch. 30.

Premises defined, 45-2-101.

Public nuisance, 45-8-111.

Conditions of bail — violation thereof, 46-9-501 through 46-9-505.

45-8-113. Creating a hazard. (1) A person commits the offense of creating a hazard if he knowingly:

(a) discards in any place where it might attract children a container having a compartment of more than 1 ½ cubic feet capacity and a door or lid that locks or fastens automatically when closed and cannot easily be opened from the inside and fails to remove the door, lid, or locking or fastening device;

(b) being the owner or otherwise having possession of property upon which there is a well, cistern, cesspool, mine shaft, or other hole of a depth of 4 feet or more and a top width of 12 inches or more, fails to cover or fence it with a suitable protective construction;

(c) tampers with an aircraft without the consent of the owner;

(d) being the owner or otherwise having possession of property upon which there is a steam engine or steam boiler, continues to use a steam engine or steam boiler which is in an unsafe condition;

(e) being a person in the act of game hunting, acts in a negligent manner or knowingly fails to give all reasonable assistance to any person whom he has injured; or

(f) deposits any hard substance upon or between any railroad tracks which will tend to derail railroad cars or other vehicles.

(2) A person convicted of the offense of creating a hazard shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-8-108 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 31, Ch. 359, L. 1977; R.C.M. 1947, 94-8-108.

Cross-References

Knowingly defined, 45-2-101.

Negligently defined, 45-2-101.

Possession defined, 45-2-101.

Tamper defined, 45-2-101.

Criminal responsibility of corporations, 45-2-311.

Assault — negligently causing bodily injury to another, 45-5-201.

45-8-114. Failure to yield party line. (1) Any person who fails to relinquish a telephone party line or public pay telephone after he has been requested to do so to permit another to place an emergency call to a fire department or police department or for medical aid or ambulance service shall be imprisoned for a term not to exceed 10 days or fined not to exceed $25, or both.

(2) It is a defense to prosecution under subsection (1) that the accused did not know or did not have reason to know of the emergency in question or that the accused was himself using the telephone party line or public pay telephone for such an emergency call.

(3) Any person who requests another to relinquish a telephone party line or public pay telephone on the pretext that he must place an emergency call, knowing such pretext to be false, shall be imprisoned for a term not to exceed 10 days or fined not to exceed $25, or both.

(4) Every telephone company doing business in this state shall print a copy of subsections (1), (2), and (3) of this section in each telephone directory published by it after January 1, 1974.

History: En. 94-8-109 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-109.

Cross-References

Knowingly defined, 45-2-101.

Criminal responsibility of corporations, 45-2-311.

Part 2

Offensive, Indecent, and Inhumane Conduct

45-8-201. Obscenity. (1) A person commits the offense of obscenity when, with knowledge of the obscene nature thereof, he purposely or knowingly:

(a) sells, delivers, or provides or offers or agrees to sell, deliver, or provide any obscene writing, picture, record, or other representation or embodiment of the obscene to anyone under the age of 18;

(b) presents or directs an obscene play, dance, or other performance, or participates in that portion thereof which makes it obscene, to anyone under the age of 18;

(c) publishes, exhibits, or otherwise makes available anything obscene to anyone under the age of 18;

(d) performs an obscene act or otherwise presents an obscene exhibition of his body to anyone under the age of 18;

(e) creates, buys, procures, or possesses obscene matter or material with the purpose to disseminate it to anyone under the age of 18; or

(f) advertises or otherwise promotes the sale of obscene material or materials represented or held out by him to be obscene.

(2) A thing is obscene if:

(a) (i) it is a representation or description of perverted ultimate sexual acts, actual or simulated;

(ii) it is a patently offensive representation or description of normal ultimate sexual acts, actual or simulated; or

(iii) it is a patently offensive representation or description of masturbation, excretory functions, or lewd exhibition of the genitals; and

(b) taken as a whole the material:

(i) applying contemporary community standards, appeals to the prurient interest in sex;

(ii) portrays conduct described in (2)(a)(i), (ii), or (iii) of this section in a patently offensive way; and

(iii) lacks serious literary, artistic, political, or scientific value.

(3) In any prosecution for an offense under this section, evidence shall be admissible to show:

(a) the predominant appeal of the material and what effect, if any, it would probably have on the behavior of people;

(b) the artistic, literary, scientific, educational, or other merits of the material;

(c) the degree of public acceptance of the material in the community;

(d) appeal to prurient interest or absence thereof in advertising or other promotion of the material; or

(e) purpose of the author, creator, publisher, or disseminator.

(4) A person convicted of obscenity shall be fined at least $500 but not more than $1,000 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(5) Cities, towns, or counties may adopt ordinances or resolutions which are more restrictive as to obscenity than the provisions of this section and 45-8-202.

History: En. 94-8-110 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 407, L. 1975; R.C.M. 1947, 94-8-110; amd. Sec. 1, I.M. 79, app. Nov. 7, 1978.

Cross-References

Knowingly defined, 45-2-101.

Purposely defined, 45-2-101.

Indecent exposure, 45-5-504.

45-8-202. Public display of offensive material. (1) A person is guilty of public display of offensive sexual material when:

(a) with knowledge of its character and content, he displays or permits to be displayed in or on any window, showcase, newsstand, display rack, wall, door, billboard, marquee, or similar place any pictorial, three-dimensional, or other visual representation of a person or a portion of the human body that predominantly appeals to prurient interest in sex, is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and is utterly without redeeming social importance for minors; and

(b) he does not:

(i) separate that material by an opaque structure from other materials displayed; and

(ii) establish by official identification that each person viewing the displayed material is at least 18 years of age.

(2) A theater may not display previews or projections advertising or promoting motion pictures if such previews or projections contain a display of offensive sexual or offensive violent material and if minors are permitted to attend the showing of the motion picture then being featured.

(3) A drive-in movie screen may not display any material prohibited by subsection (1) in such manner that the display is easily visible from any public street, sidewalk, thoroughfare, or transportation facility.

(4) A person convicted of the public display of offensive sexual material or convicted of otherwise violating this section shall be fined at least $500 but not more than $1,000 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(5) For purposes of this section, "offensive violent material" means material which is so violent as to be patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors.

History: En. Secs. 1 to 3, Ch. 463, L. 1973; amd. Sec. 2, Ch. 407, L. 1975; amd. Sec. 1, Ch. 391, L. 1977; R.C.M. 1947, 94-8-110.1.

Cross-References

Misdemeanor defined, 45-2-101.

Person defined, 45-2-101.

Obscenity, 45-8-201.

45-8-203. Certain motion picture theater employees not liable for prosecution. (1) As used in this section, "employee" means any person regularly employed by the owner or operator of a motion picture theater if he has no financial interest other than salary or wages in the ownership or operation of the motion picture theater, has no financial interest in or control over the selection of the motion pictures shown in the theater, and is working within the motion picture theater where he is regularly employed. "Employee" does not include a manager of the motion picture theater.

(2) No employee is liable to prosecution under 45-8-201 and 45-8-202 or under any city or county ordinance for exhibiting or possessing with intent to exhibit any obscene motion picture provided the employee is acting within the scope of his regular employment at a showing open to the public.

History: En. 94-8-110.3 by Sec. 1, Ch. 76, L. 1974; R.C.M. 1947, 94-8-110.3.

45-8-204. Sale and advertisement of contraceptive drugs and devices. (1) It is unlawful for any person, firm, corporation, partnership, or association to sell, offer for sale, or give away, by means of vending machines, personal or collective distribution, solicitation, or peddling or in any other manner whatsoever, contraceptive drugs or devices, prophylactic rubber goods, or other articles for the prevention of venereal diseases. This subsection does not apply to regularly licensed practitioners of medicine or osteopathy, other licensed persons practicing other healing arts, registered pharmacists, or wholesale drug jobbers or manufacturers who sell to retail stores only.

(2) It is unlawful to:

(a) exhibit or display prophylactics or contraceptives in any show window, upon the streets, or in any public place other than in the place of business of a licensed pharmacist;

(b) advertise such in any magazine, newspaper, or other form of publication originating in or published within the state of Montana;

(c) publish or distribute from house to house or upon the streets any circular, booklet, or other form of advertising of prophylactics or contraceptives; or

(d) advertise such by other visual means, auditory method, or radio broadcast or by the use of outside signs on stores, billboards, window displays, or other advertising visible to persons upon the streets or public highways.

(3) Nothing in this section prevents the advertising of prophylactics or contraceptives in the trade press, those magazines whose principal circulation is to the medical and pharmaceutical professions, or those magazines and other publications having interstate circulation or originating outside of the state of Montana where the advertising does not violate any United States law or federal postal regulation.

(4) Nothing in this section prevents the furnishing within the store or place of business of a licensed pharmacist to persons qualified to purchase, and then only upon their inquiry, such printed or other information as is requisite to proper use in relation to any merchandise coming within the provisions of this section.

(5) Nothing in this section prevents the dissemination of medically acceptable contraceptive information by printed or other methods concerning the availability and use of any merchandise coming within the provisions of this section.

(6) Any officer of the law may cause the arrest of a person violating any provision of this section, seize stocks illegally held, and seize any mechanical device or vending machine containing any merchandise coming within the provisions of this section, holding the owner of the machine and the occupier and owner of the premises where seizure is made to be in violation of this section.

(7) Any person, any member of a firm or partnership, or the officers of a corporation or association who knowingly violate any of the provisions of this section are guilty of a misdemeanor and shall, upon conviction, be punished by a fine not to exceed $500 or by imprisonment not to exceed 6 months in the county jail, or both.

(8) Justice of the peace courts and the district courts of the state have concurrent jurisdiction in all prosecutions and causes arising under this section.

History: En. Secs. 1 to 4, Ch. 430, L. 1973; amd. Sec. 32, Ch. 359, L. 1977; R.C.M. 1947, 94-8-110.2.

Cross-References

Misdemeanor defined, 45-2-101.

Premises defined, 45-2-101.

Public place defined, 45-2-101.

45-8-205 through 45-8-208 reserved.

45-8-209. Harming a police dog — penalty. (1) A person commits the offense of harming a police dog if he purposely or knowingly shoots or kills a police dog being used by a law enforcement officer in discharging or attempting to discharge any legal duty in a reasonable and proper manner.

(2) A person convicted of the offense of harming a police dog may be fined an amount not to exceed $5,000 or be imprisoned in the state prison for a term not to exceed 1 year, or both.

(3) As used in this section, the following definitions apply:

(a) "Law enforcement officer" means a person who is a peace officer as defined in 46-1-201.

(b) "Police dog" means a dog that is:

(i) used by a law enforcement agency, as defined in 7-32-201, in the exercise of its authority;

(ii) specifically trained for law enforcement work; and

(iii) under the control of a law enforcement officer.

History: En. Secs. 1, 2, Ch. 536, L. 1985.

45-8-210. Causing animals to fight — owners, trainers, and spectators — penalties — exception — definition. (1) A person commits the offense of causing animals to fight if he:

(a) owns, possesses, keeps, or trains any animal with the intent that such animal fight or be engaged in an exhibition of fighting with another animal;

(b) allows or causes any animal to fight with another animal or causes any animal to menace or injure another animal for the purpose of sport, amusement, or gain;

(c) knowingly permits any act in violation of subsection (1)(a) or (1)(b) to take place on any premises under his charge or control, or aids or abets any such act;

(d) participates in any exhibition in which animals are fighting for the purpose of sport, amusement, or gain.

(2) A person convicted of violating this section is guilty of a felony and shall be fined an amount not to exceed $5,000 or imprisoned in the state prison for a term of not less than 1 year or more than 5 years, or both such fine and imprisonment.

(3) Nothing in this section prohibits the following:

(a) accepted husbandry practices used in the raising of livestock or poultry;

(b) the use of animals in the normal and usual course of rodeo events; or

(c) the use of animals in hunting and training as permitted by law.

(4) For purposes of this section, "animal" means any cock, bird, dog, or mammal except man.

History: En. Secs. 2, 3, Ch. 410, L. 1985.

45-8-211. Cruelty to animals. (1) A person commits the offense of cruelty to animals if without justification he knowingly or negligently subjects an animal to mistreatment or neglect by:

(a) overworking, beating, tormenting, injuring, or killing any animal;

(b) carrying any animal in a cruel manner;

(c) failing to provide an animal in his custody with proper food, drink, or shelter;

(d) abandoning any helpless animal or abandoning any animal on any highway, railroad, or in any other place where it may suffer injury, hunger, or exposure or become a public charge; or

(e) promoting, sponsoring, conducting, or participating in a horse race of more than 2 miles.

(2) A person convicted of the offense of cruelty to animals shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. If such person is the owner, he may be required to forfeit to the county in which he is convicted any animal affected. This provision does not affect the interest of any secured party or other person who has not participated in the offense.

(3) In addition to the sentence provided in subsection (2), the court may require the defendant to pay all reasonable costs incurred in providing necessary veterinary attention and treatment for any animal affected.

History: En. 94-8-106 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-106; amd. Sec. 1, Ch. 148, L. 1985; amd. Sec. 1, Ch. 410, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 148 inserted second and third sentences in (2); and inserted (3).

Chapter 410 in (1)(e) at end, deleted "or promoting, sponsoring, conducting, or participating in any fight between any animals".

Cross-References

Knowingly defined, 45-2-101.
Negligently defined, 45-2-101.

45-8-212. Criminal defamation. (1) Defamatory matter is anything which exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or injury to his or its business or occupation.

(2) Whoever, with knowledge of its defamatory character, orally, in writing, or by any other means communicates any defamatory matter to a third person without the consent of the person defamed commits the offense of criminal defamation and may be sentenced to imprisonment for not more than 6 months in the county jail or a fine of not more than $500, or both.

(3) Violation of subsection (2) is justified if:

(a) the defamatory matter is true and is communicated with good motives and for justifiable ends;

(b) the communication is absolutely privileged;

(c) the communication consists of fair comment made in good faith with respect to persons participating in matters of public concern;

(d) the communication consists of a fair and true report or a fair summary of any judicial, legislative, or other public or official proceedings; or

(e) the communication is between persons each having an interest or duty with respect to the subject matter of the communication and is made with the purpose to further such interest or duty.

(4) No person shall be convicted on the basis of an oral communication of defamatory matter except upon the testimony of at least two other persons that they heard and understood the oral statement as defamatory or upon a plea of guilty.

History: En. 94-8-111 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-111.

Cross-References

Defamatory matter defined, 45-2-101.
Knowledge defined, 45-2-101.
Official proceeding defined, 45-2-101.
Person defined, 45-2-101.
Criminal responsibility of corporations, 45-2-311.

45-8-213. Privacy in communications. (1) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if he knowingly or purposely:

(a) with the purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with any person by telephone and uses any obscene, lewd, or profane language, suggests any lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of any person (the use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend);

(b) uses a telephone to attempt to extort money or any other thing of value from any person or to disturb by repeated telephone calls the peace, quiet, or right of privacy of any person at the place where the telephone call or calls are received;

(c) records or causes to be recorded any conversation by use of a hidden electronic or mechanical device which reproduces a human conversation without the knowledge of all parties to the conversation. Subsection (c) does not apply to duly elected or appointed public officials or employees when the transcription or recording is done in the performance of official duty, to persons speaking at public meetings, or to persons given warning of the recording.

(d) by means of any machine, instrument, or contrivance or in any other manner:

(i) reads or attempts to read any message or learn the contents thereof while it is being sent over a telegraph line;

(ii) learns or attempts to learn the contents of any message while it is in a telegraph office or is being received thereat or sent therefrom; or

(iii) uses, attempts to use, or communicates to others any information so obtained;

(e) discloses the contents of a telegraphic message or any part thereof addressed to another person without the permission of such person, unless directed to do so by the lawful order of a court; or

(f) opens or reads or causes to be read any sealed letter not addressed to himself without being authorized to do so by either the writer of the letter or the person to whom it is addressed or, without the like authority, publishes any of the contents of the letter knowing the same to have been unlawfully opened.

(2) A person convicted of the offense of violating privacy in communications shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-8-114 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 33, Ch. 359, L. 1977; R.C.M. 1947, 94-8-114; amd. Sec. 1, Ch. 356, L. 1979.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.
Knowingly defined, 45-2-101.
Purposely defined, 45-2-101.
Threat defined, 45-2-101.
Control of telephone communication to and from a person holding hostages — nonliability of telephone company officials, 69-6-104.

45-8-214. Bribery in contests. (1) A person commits the offense of bribery in contests if he purposely or knowingly offers, confers, or agrees to confer upon another or solicits, accepts, or agrees to accept from another:

(a) any pecuniary benefit as a consideration for the recipient's failure to use his best efforts in connection with any professional or amateur athletic contest, sporting event, or exhibition; or

(b) any benefit as consideration for a violation of a known duty as a person participating in, officiating, or connected with any professional or amateur athletic contest, sporting event, or exhibition.

(2) A person convicted of the offense of bribery in contests shall be fined not to exceed $5,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

History: En. 94-8-112 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-112.

Cross-References

Benefit defined, 45-2-101.

Knowingly defined, 45-2-101.

Pecuniary defined, 45-2-101.

Purposely defined, 45-2-101.

Criminal responsibility of corporations, 45-2-311.

45-8-215. Desecration of flags. (1) In this section "flag" means anything which is or purports to be the official flag of the United States, the United States shield, the United States coat of arms, the Montana state flag, or a copy, picture, or representation of any of them.

(2) A person commits the offense of desecration of flags if he purposely or knowingly:

(a) publicly mutilates, defiles, or casts contempt upon the flag;

(b) places on or attaches to the flag any work, mark, design, or advertisement not properly a part of such flag or exposes to public view a flag so altered;

(c) manufactures or exposes to public view an article of merchandise or a wrapper or receptacle for merchandise upon which the flag is depicted; or

(d) uses the flag for commercial advertising purposes.

(3) A person convicted of the offense of desecration of flags shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(4) This section does not apply to flags depicted on written or printed documents or periodicals or on stationery, ornaments, pictures, or jewelry, provided there are not unauthorized words or designs on such flags and provided the flag is not connected with any advertisement.

History: En. 94-7-502 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-502; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also

enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References
Knowingly defined, 45-2-101.
Purposely defined, 45-2-101.

Part 3
Weapons

45-8-301. Uniformity of interpretation. Sections 45-8-302 through 45-8-309 shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact them.

History: En. Sec. 11, Ch. 43, L. 1935; re-en. Sec. 11317.10, R.C.M. 1935; Sec. 94-3110, R.C.M. 1947; redes. 94-8-209 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-209.

45-8-302. Definitions. In 45-8-303 through 45-8-309 the following definitions apply:

(1) "Machine gun" means a weapon of any description by whatever name known, loaded or unloaded, from which more than six shots or bullets may be rapidly, automatically, or semiautomatically discharged from a magazine by a single function of the firing device.

(2) "Crime of violence" means any of the following crimes or an attempt to commit any of the same: any forcible felony, robbery, burglary, and criminal trespass.

(3) "Person" includes a firm, partnership, association, or corporation.

History: En. Sec. 1, Ch. 43, L. 1935; re-en. Sec. 11317.1, R.C.M. 1935; Sec. 94-3101, R.C.M. 1947; redes. 94-8-201 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 34, Ch. 359, L. 1977; R.C.M. 1947, 94-8-201.

Cross-References
Forcible felony defined, 45-2-101.
Person defined, 45-2-101.
Weapon defined, 45-2-101.
Robbery, 45-5-401.
Criminal trespass, 45-6-202, 45-6-203.
Burglary, 45-6-204.

45-8-303. Possession or use of machine gun in connection with a crime. Possession or use of a machine gun in the perpetration or attempted perpetration of a crime of violence is hereby declared to be a crime punishable by imprisonment in the state penitentiary for a term of not less than 20 years.

History: En. Sec. 2, Ch. 43, L. 1935; re-en. 11317.2, R.C.M. 1935; Sec. 94-3102, R.C.M. 1947; redes. 94-8-202 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-202.

Cross-References
Possession defined, 45-2-101.
Attempt, 45-4-103.
Aggravated assault, 45-5-202.

45-8-304. Possession or use of machine gun for offensive purpose. Possession or use of a machine gun for offensive or aggressive purpose is hereby declared to be a crime punishable by imprisonment in the state penitentiary for a term of not less than 10 years.

History: En. Sec. 3, Ch. 43, L. 1935; re-en. Sec. 11317.3, R.C.M. 1935; Sec. 94-3103, R.C.M. 1947; redes. 94-8-203 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-203.

Cross-References
Possession defined, 45-2-101.

45-8-305. Presumption of offensive or aggressive purpose. Possession or use of a machine gun shall be presumed to be for offensive or aggressive purpose:

(1) when the machine gun is on premises not owned or rented for bona fide permanent residence or business occupancy by the person in whose possession the machine gun may be found;

(2) when the machine gun is in the possession of or used by a person who has been convicted of a crime of violence in any court of record, state or federal, in the United States of America or its territories or insular possessions;

(3) when the machine gun is of the kind described in 45-8-309 and has not been registered as required in that section; or

(4) when empty or loaded pistol shells of 30 (.30 in. or 7.63 mm.) or larger caliber which have been or are susceptible of being used in the machine gun are found in the immediate vicinity thereof.

History: En. Sec. 4, Ch. 43, L. 1935; re-en. Sec. 11317.4, R.C.M. 1935; Sec. 94-3104, R.C.M. 1947; amd. and redes. 94-8-204 by Sec. 26, Ch. 513, L. 1973; amd. Sec. 35, Ch. 359, L. 1977; R.C.M. 1947, 94-8-204.

Cross-References

Conviction defined, 45-2-101.

Possession defined, 45-2-101.

Premises defined, 45-2-101.

Possession or use of a machine gun for offensive or aggressive purpose, 45-8-304.

45-8-306. Presence of gun as evidence of possession or use. The presence of a machine gun in any room, boat, or vehicle shall be evidence of the possession or use of the machine gun by each person occupying the room, boat, or vehicle where the weapon is found.

History: En. Sec. 5, Ch. 43, L. 1935; re-en. Sec. 11317.5, R.C.M. 1935; Sec. 94-3105, R.C.M. 1947; redes. 94-8-205 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-205.

Cross-References

Vehicle defined, 45-2-101.

Weapon defined, 45-2-101.

Presumption of offensive or aggressive purpose, 45-8-305.

45-8-307. Exceptions. Nothing contained in 45-8-301 through 45-8-309 shall prohibit or interfere with:

(1) the manufacture of machine guns for and sale of machine guns to the military forces or the peace officers of the United States or of any political subdivision thereof or the transportation required for that purpose;

(2) the possession of a machine gun for scientific purpose or the possession of a machine gun not usable as a weapon and possessed as a curiosity, ornament, or keepsake;

(3) the possession of a machine gun other than one adapted to use pistol cartridges of 30 (.30 in. or 7.63 mm.) or larger caliber for a purpose manifestly not aggressive or offensive.

History: En. Sec. 6, Ch. 43, L. 1935; re-en. Sec. 11317.6, R.C.M. 1935; Sec. 94-3106, R.C.M. 1947; redes. 94-8-206 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-206.

Cross-References

Possession defined, 45-2-101.

45-8-308. Manufacturer's register of machine guns. (1) Every manufacturer shall keep a register of all machine guns manufactured or handled by him.

(2) This register shall show, for every machine gun:

(a) the model and serial number;

(b) the date of manufacture, sale, loan, gift, delivery, or receipt;

(c) the name, address, and occupation of the person to whom the machine gun was sold, loaned, given, or delivered or from whom it was received; and

(d) the purpose for which it was acquired by the person to whom the machine gun was sold, loaned, given, or delivered or from whom received.

(3) Upon demand every manufacturer shall permit any marshal, sheriff, or police officer to inspect his entire stock of machine guns, parts, and supplies therefor and shall produce the register herein required for inspection.

(4) A violation of any provision of this section shall be punishable by a fine of not less than $100.

History: En. Sec. 7, Ch. 43, L. 1935; re-en. Sec. 11317.7, R.C.M. 1935; Sec. 94-3107, R.C.M. 1947; redes. 94-8-207 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-207.

Cross-References

Purchase of rifle or shotgun in contiguous state by Montana resident, 45-8-341.

Purchase of rifle or shotgun in Montana by resident of contiguous state, 45-8-342.

45-8-309. Registration of machine guns — presumption from failure to register. (1) Every machine gun now in this state adapted to use pistol cartridges of 30 (.30 in. or 7.63 mm.) or larger caliber shall be registered with the department of justice annually on February 20. If acquired hereafter it shall be registered within 24 hours after its acquisition.

(2) Blanks for registration shall be prepared by the department and furnished upon application.

(3) To comply with this section the application as filed must show the model and serial number of the gun, the name, address, and occupation of the person in possession, and from whom and the purpose for which the gun was acquired.

(4) The registration data shall not be subject to inspection by the public.

(5) Any person failing to register any gun as required by this section shall be presumed to possess the same for offensive or aggressive purpose.

History: En. Sec. 8, Ch. 43, L. 1935; re-en. Sec. 11317.8, R.C.M. 1935; Sec. 94-3108, R.C.M. 1947; redes. 94-8-208 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-208.

Cross-References

Presumption of offensive or aggressive purpose, 45-8-305.

45-8-310 through 45-8-314 reserved.

45-8-315. Definition. "Concealed weapon" shall mean any weapon mentioned in 45-8-316 through 45-8-319 which shall be wholly or partially covered by the clothing or wearing apparel of the person so carrying or bearing the weapon.

History: En. Sec. 6, Ch. 74, L. 1919; re-en. Sec. 11307, R.C.M. 1921; re-en. Sec. 11307, R.C.M. 1935; Sec. 94-3530, R.C.M. 1947; redes. 94-8-215 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-215.

Cross-References

Weapon defined, 45-2-101.

Permits to carry concealed weapons, 45-8-319.

45-8-316. Carrying concealed weapons. (1) Every person who carries or bears concealed upon his person a dirk, dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of any metal or hard substance, knife having a blade 4 inches long or longer, razor, not including a safety razor, or other deadly weapon shall be punished by a fine not exceeding $500 or imprisonment in the county jail for a period not exceeding 6 months, or both.

(2) A person who has previously been convicted of an offense, committed on a different occasion than the offense under this section, in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed and who carries or bears concealed upon his person any of the weapons described in subsection (1) shall be punished by a fine not exceeding $1,000 or imprisoned in the state prison for a period not exceeding 5 years, or both.

History: En. Sec. 1, Ch. 74, L. 1919; re-en. Sec. 11302, R.C.M. 1921; re-en. Sec. 11302, R.C.M. 1935; Sec. 94-3525, R.C.M. 1947; redes. 94-8-210 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 36, Ch. 359, L. 1977; amd. Sec. 1, Ch. 411, L. 1977; R.C.M. 1947, 94-8-210.

Cross-References

Offense defined, 45-2-101.

Concealed weapon defined, 45-8-315.

45-8-317. Exceptions. Section 45-8-316 does not apply to:

(1) any peace officer of the state of Montana;

(2) any officer of the United States government authorized to carry a concealed weapon;

(3) a person in actual service as a national guardsman;

(4) a person summoned to the aid of any of the persons named in subsections (1) through (3);

(5) a civil officer or his deputy engaged in the discharge of official business;

(6) a person authorized by a judge of a district court of this state to carry a weapon; or

(7) the carrying of arms on one's own premises or at one's home or place of business.

History: En. Sec. 3, Ch. 74, L. 1919; re-en. Sec. 11304, R.C.M. 1921; re-en. Sec. 11304, R.C.M. 1935; Sec. 94-3527, R.C.M. 1947; amd. Sec. 1, Ch. 63, L. 1969; amd. Sec. 1, Ch. 54, L. 1971; redes. 94-8-212 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 37, Ch. 359, L. 1977; R.C.M. 1947, 94-8-212.

45-8-318. Possession of deadly weapon by prisoner. (1) Every prisoner committed to the Montana state prison who, while at such state prison, while being conveyed to or from the Montana state prison, while at a state prison farm or ranch, while being conveyed to or from any such place, or while under the custody of prison officials, officers, or employees, possesses or carries upon his person or has under his custody or control without lawful authority a dirk, dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of any metal or hard substance, knife, razor not including a safety razor, or other deadly weapon is guilty of a felony.

(2) He shall be punished by imprisonment in the state prison for a term not less than 5 years or more than 15 years, such term of imprisonment to commence from the time he would otherwise have been released from said prison, or shall be punished by a fine of not more than $50,000, or by both such fine and imprisonment.

History: En. Sec. 1, Ch. 131, L. 1961; Sec. 94-3527.1, R.C.M. 1947; redes. 94-8-213 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-213; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Felony defined, 45-2-101.

Aggravated kidnapping, 45-5-303.

Transferring illegal or unauthorized communication, 45-7-307.

45-8-319. Permits to carry concealed weapons — records — revocation. (1) Any judge of a district court of this state may grant permission to carry or bear, concealed or otherwise, a pistol or revolver for a term not exceeding 1 year.

(2) All applications for such permission must be made by petition filed with the clerk of the district court. No charge may be made for the filing of the petition.

(3) The applicant shall, if personally unknown to the judge, furnish proof by a credible witness of his good moral character and peaceable disposition.

(4) No such permission shall be granted any person who is not a citizen of the United States and who has not been an actual bona fide resident of the state of Montana for 6 months immediately next preceding the date of such application.

(5) A record of permission granted shall be kept by the clerk of the court. The record shall state the date of the application, the date of the permission, the name of the person to whom permission is granted, the name of the judge granting the permission, and the name of the person, if any, by whom good moral character and peaceable disposition are proved. The record must be signed by the person who is granted such permission.

(6) The clerk shall thereupon issue under his hand and the seal of the court a certificate, in a convenient card form so that the same may be carried in the pocket, stating:

"Permission to .... authorizing him to carry or bear, concealed or otherwise, a pistol or revolver for the period of .... from the date hereof has been granted by ...., a judge of the district court of the .... judicial district of the state of Montana, in and for the county of .....

Witness the hand of the clerk and the seal of said court this .... day of ...., 19...

......
Clerk"

(7) The date of the certificate shall be the date of the granting of such permission. The certificate shall bear upon its face the signature of the person receiving the same.

(8) Upon good cause shown the judge granting such permission may, in his discretion without notice to the person receiving such permission, revoke

the same. The date of the revocation shall be noted by the clerk upon the record kept by him.

(9) All permissions to carry or bear concealed weapons granted before March 3, 1919, are hereby revoked.

History: En. Sec. 5, Ch. 74, L. 1919; re-en. Sec. 11306, R.C.M. 1921; re-en. Sec. 11306, R.C.M. 1935; Sec. 94-3529, R.C.M. 1947; redes. 94-8-214 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 38, Ch. 359, L. 1977; R.C.M. 1947, 94-8-214.

Cross-References

Concealed weapon defined, 45-8-315.

Exceptions, 45-8-317.

45-8-320. Repealed. Sec. 1, Ch. 312, L. 1979.

History: En. Sec. 8, Ch. 74, L. 1919; re-en. Sec. 11309, R.C.M. 1921; re-en. Sec. 11309, R.C.M. 1935; Sec. 94-3532, R.C.M. 1947; redes. 94-8-217 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-217.

45-8-321 through 45-8-330 reserved.

45-8-331. Switchblade knives. (1) Every person who carries or bears upon his person, who carries or bears within or on any motor vehicle or other means of conveyance owned or operated by him, or who owns, possesses, uses, stores, gives away, sells, or offers for sale a switchblade knife shall be punished by a fine not exceeding $500 or by imprisonment in the county jail for a period not exceeding 6 months or by both such fine and imprisonment.

(2) A bona fide collector whose collection is registered with the sheriff of the county in which said collection is located is hereby exempted from the provisions of this section.

(3) For the purpose of this section a switchblade knife is defined as any knife which has a blade 1 ½ inches long or longer which opens automatically by hand pressure applied to a button, spring, or other device in the handle of the knife.

History: En. Sec. 1, Ch. 243, L. 1957; Sec. 94-35-273, R.C.M. 1947; redes. 94-8-226 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-226.

Cross-References

Person defined, 45-2-101.

Vehicle defined, 45-2-101.

45-8-332. Definitions. (1) "Destructive device", as used in this chapter, includes but is not limited to the following weapons:

(a) a projectile containing an explosive or incendiary material or any other similar chemical substance, including but not limited to that which is commonly known as tracer or incendiary ammunition, except tracer ammunition manufactured for use in shotguns;

(b) a bomb, grenade, explosive missile, or similar device or a launching device therefor;

(c) a weapon of a caliber greater than .60 caliber which fires fixed ammunition or any ammunition therefor, other than a shotgun or shotgun ammunition;

(d) a rocket, rocket-propelled projectile, or similar device of a diameter greater than 0.60 inch or a launching device therefor and a rocket, rocket-propelled projectile, or similar device containing an explosive or incendiary material or any other similar chemical substance other than the propellant for the device, except devices designed primarily for emergency or distress signaling purposes;

(e) a breakable container which contains a flammable liquid with a flashpoint of 150 degrees Fahrenheit or less and which has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for the purpose of illumination.

(2) "Explosive", as used in this chapter, means any explosive defined in rules adopted by the state fire marshal pursuant to 50-3-102(3).

History: En. Sec. 1, Ch. 304, L. 1971; Sec. 69-1931, R.C.M. 1947; amd. and redes. 94-8-209.1 by Sec. 72, Ch. 359, L. 1977; R.C.M. 1947, 94-8-209.1; amd. Sec. 1, Ch. 187, L. 1985.

Compiler's Comments

1985 Amendment: In (2) substituted "rules adopted by the state fire marshal pursuant to 50-3-102(3)" for "50-38-101".

Cross-References

Weapon defined, 45-2-101.

Reckless or malicious use of explosives, 45-8-333.

Possession of a destructive device, 45-8-334.

Possession of explosives, 45-8-335.

Additional sentence for use of destructive device, 46-18-221.

45-8-333. Reckless or malicious use of explosives. Every person who shall recklessly or maliciously use, handle, or have in his or her possession any blasting powder, giant or Hercules powder, giant caps, or other highly explosive substance whereby any human being is intimidated, terrified, or endangered shall be guilty of a misdemeanor.

History: En. Sec. 713, Pen. C. 1895; re-en. Sec. 8551, Rev. C. 1907; re-en. Sec. 2812, R.C.M. 1921; re-en. Sec. 2812, R.C.M. 1935; R.C.M. 1947, 69-1927.

Cross-References

Misdemeanor defined, 45-2-101.

Person defined, 45-2-101.

Possession defined, 45-2-101.

Definitions, 45-8-332.

Possession of a destructive device, 45-8-334.

Possession of explosives, 45-8-335.

When no penalty is specified, 46-18-212.

45-8-334. Possession of a destructive device. (1) A person who, with the purpose to commit a felony, has in his possession any destructive device on a public street or highway, in or near any theater, hall, school, college, church, hotel, other public building, or private habitation, in, on, or near any aircraft, railway passenger train, car, vessel engaged in carrying passengers for hire, or other public place ordinarily passed by human beings is guilty of the offense of possession of a destructive device.

(2) A person convicted of the offense of possession of a destructive device shall be imprisoned in the state prison for a period of not more than 10 years or be fined an amount of not more than $50,000, or both.

History: En. Sec. 2, Ch. 304, L. 1971; Sec. 69-1932, R.C.M. 1947; amd. and redes. 94-8-209.2 by Sec. 73, Ch. 359, L. 1977; R.C.M 1947, 94-8-209.2; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213,

46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Felony defined, 45-2-101.

Person defined, 45-2-101.

Possession defined, 45-2-101.

Purpose defined, 45-2-101.

Destructive device defined, 45-8-332.

Reckless or malicious use of explosives, 45-8-333.

Possession of explosives, 45-8-335.

Possession prima facie evidence of unlawful purpose, 45-8-337.

Administrative rules governing use of explosives — State Fire Marshal, 50-3-102.

45-8-335. Possession of explosives. (1) A person commits the offense of possession of explosives if he possesses, manufactures, transports, buys, or sells an explosive compound, flammable material, or timing, detonating, or similar device for use with an explosive compound or incendiary device and:

(a) has the purpose to use such explosive, material, or device to commit an offense; or

(b) knows that another has the purpose to use such explosive, material, or device to commit an offense.

(2) A person convicted of the offense of possession of explosives shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-6-105 by Sec. 1, Ch. 513, L. 1973; Sec. 94-6-105, R.C.M. 1947; amd. and redes. 94-8-209.3 by Sec. 74, Ch. 359, L. 1977; R.C.M. 1947, 94-8-209.3; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Knowingly defined, 45-2-101.

Offense defined, 45-2-101.

Person defined, 45-2-101.

Possession defined, 45-2-101.

Purposely defined, 45-2-101.

When accountability exists, 45-2-302.

Definitions, 45-8-332.

Reckless or malicious use of explosives, 45-8-333.

Possession of a destructive device, 45-8-334.

Possession prima facie evidence of unlawful purpose, 45-8-337.

Administrative rules governing use of explosives — State Fire Marshal, 50-3-102.

45-8-336. Possession of a silencer. (1) A person commits the offense of possession of a silencer if he possesses, manufactures, transports, buys, or sells a silencer and has the purpose to use it to commit an offense or knows that another person has such a purpose.

(2) A person convicted of the offense of possession of a silencer is punishable by imprisonment in the state prison for a term of not less than 5 years

or more than 30 years or a fine of not less than $1,000 or more than $20,000 or by both such fine and imprisonment.

History: **En. 94-8-209.4 by Sec. 75, Ch. 359, L. 1977; R.C.M. 1947, 94-8-209.4.**

Cross-References

Knowingly defined, 45-2-101.
Offense defined, 45-2-101.
Person defined, 45-2-101.
Possession defined, 45-2-101.
Purposely defined, 45-2-101.
Possession prima facie evidence of unlawful purpose, 45-8-337.

45-8-337. Possession prima facie evidence of unlawful purpose. Possession of a silencer or of a bomb or similar device charged or filled with one or more explosives is prima facie evidence of a purpose to use the same to commit an offense.

History: **En. 94-8-209.5 by Sec. 76, Ch. 359, L. 1977; R.C.M. 1947, 94-8-209.5.**

Cross-References

Offense defined, 45-2-101.
Possession defined, 45-2-101.
Purpose defined, 45-2-101.
Definitions, 45-8-332.
Reckless or malicious use of explosives, 45-8-333.
Possession of a destructive device, 45-8-334.
Possession of explosives, 45-8-335.

45-8-338 through 45-8-340 reserved.

45-8-341. Purchase of rifle or shotgun in contiguous state by Montana resident. Residents of Montana may purchase any rifle or rifles and shotgun or shotguns in a state contiguous to Montana, provided that such residents conform to the applicable provisions of the federal Gun Control Act of 1968 and regulations thereunder, as administered by the United States secretary of the treasury, and provided further that such residents conform to the provisions of law applicable to such purchase in Montana and in the state in which the purchase is made.

History: **En. Sec. 1, Ch. 87, L. 1969; Sec. 94-3578.1, R.C.M. 1947; redes. 94-8-219 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-219.**

45-8-342. Purchase of rifle or shotgun in Montana by resident of contiguous state. Residents of a state contiguous to Montana may purchase any rifle or rifles and shotgun or shotguns in Montana, provided that such residents conform to the applicable provisions of the federal Gun Control Act of 1968 and regulations thereunder, as administered by the United States secretary of the treasury, and provided further that such residents conform to the provisions of law applicable to such purchase in Montana and in the state in which such persons reside.

History: **En. Sec. 2, Ch. 87, L. 1969; Sec. 94-3578.2, R.C.M. 1947; redes. 94-8-220 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-220.**

45-8-343. Firing firearms. (1) Except as provided in subsections (2) and (3), every person who willfully shoots or fires off a gun, pistol, or any other firearm within the limits of any town or city or of any private enclosure which contains a dwelling house is punishable by a fine not exceeding $25 or such greater fine or a term of imprisonment, or both, as the town or city may impose.

(2) Firearms may be discharged at an indoor or outdoor rifle, pistol, or shotgun shooting range located within the limits of a town or city or in a private dwelling if the shooting range is approved by the local governing body.

(3) Subsection (1) does not apply if the discharge of a firearm is justifiable under Title 45, chapter 3, part 1.

History: **En. Secs. 1, 2, p. 46, Ex. L. 1873; re-en. Sec. 185, 4th Div. Rev. Stat. 1879; re-en. Sec. 228, 4th Div. Comp. Stat. 1887; amd. Sec. 1161, Pen. C. 1895; re-en. Sec. 8834, Rev. C. 1907; re-en. Sec. 11530, R.C.M. 1921; re-en. Sec. 11530, R.C.M. 1935; Sec. 94-3578, R.C.M. 1947; redes. 94-8-218 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 39, Ch. 359, L. 1977; R.C.M. 1947, 94-8-218; amd. Sec. 1, Ch. 20, L. 1981; amd. Sec. 1, Ch. 618, L. 1983.**

Compiler's Comments

1983 Amendment: At end of (1), inserted "or such greater fine or a term of imprisonment, or both, as the city or town may impose".

1981 Amendment: Inserted "Except as provided in subsections (2) and (3)" in (1); and added subsections (2) and (3).

Cross-References

Excessive fines and cruel and unusual punishments prohibited, Art. II, sec. 22, Mont. Const.

Local government with self-government powers — limit on fixing misdemeanor penalty, 7-1-111(8).

Disorderly conduct, 45-8-101.

45-8-344. Use of firearms by children under fourteen prohibited. It is unlawful for a parent, guardian, or other person having charge or custody of a minor child under the age of 14 years to permit the minor child to carry or use in public any firearms of any description loaded with powder and lead, except when the child is accompanied by a person having charge or custody of the child or under the supervision of a qualified firearms safety instructor who has been authorized by the parent or guardian.

History: **En. Sec. 1, Ch. 111, L. 1907; Sec. 8879, Rev. C. 1907; re-en. Sec. 11565, R.C.M. 1921; re-en. Sec. 11565, R.C.M. 1935; Sec. 94-3579, R.C.M. 1947; amd. Sec. 1, Ch. 139, L. 1963; redes. 94-8-221 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 40, Ch. 359, L. 1977; R.C.M. 1947, 94-8-221.**

Cross-References

Criminal liability of parent or guardian — prosecution, 45-8-345.

45-8-345. Criminal liability of parent or guardian — prosecution. (1) Any parent, guardian, or other person violating the provisions of 45-8-344 shall be guilty of a misdemeanor.

(2) The county attorney, on complaint of any person, must prosecute violations of 45-8-344.

History: **En. Sec. 2, Ch. 111, L. 1907; Sec. 8880, Rev. C. 1907; re-en. Sec. 11566, R.C.M. 1921; re-en. Sec. 11566, R.C.M. 1935; Sec. 94-3580, R.C.M. 1947; redes. 94-8-222 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-222.**

Cross-References

When accountability exists, 45-2-302.

When no penalty is specified, 46-18-212.

45-8-346 through 45-8-350 reserved.

45-8-351. Restriction on local government regulation of firearms. (1) Except as provided in subsection (2), no county, city, town, consolidated local government, or other local government unit may prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay in purchase, sale, or other transfer), ownership, possession, transportation, use, or unconcealed carrying of any rifle, shotgun, or handgun.

(2) (a) For public safety purposes, a city or town may regulate the discharge of rifles, shotguns, and handguns. A county, city, town, consolidated local government, or other local government unit has power to prevent and suppress the carrying of concealed weapons, the carrying of weapons to a

public assembly, publicly owned building, park under its jurisdiction, or school, and the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors.

(b) Nothing contained herein shall allow any government to prohibit the legitimate display of firearms at shows or other public occasions by collectors and others, nor shall anything contained herein prohibit the legitimate transportation of firearms through any jurisdiction, whether in airports or otherwise.

History: **En. Sec. 1, Ch. 589, L. 1985.**

CHAPTER 9

DANGEROUS DRUGS

Part 1 — Offenses Involving Dangerous Drugs

Section
45-9-101. Criminal sale of dangerous drugs.
45-9-102. Criminal possession of dangerous drugs.
45-9-103. Criminal possession with intent to sell.
45-9-104. Fraudulently obtaining dangerous drugs.
45-9-105. Altering labels on dangerous drugs.
45-9-106. Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs.
45-9-107. Criminal possession of precursors to dangerous drugs.
45-9-108. Exemptions.
45-9-109 and 45-9-110 reserved.
45-9-111. Imitation dangerous drugs — definitions.
45-9-112. Criminal sale of imitation dangerous drug — penalty.
45-9-113. Criminal possession of imitation dangerous drug with purpose to sell — penalty.
45-9-114. Criminal advertisement of imitation dangerous drug — penalty.
45-9-115. Criminal manufacture of imitation dangerous drug — penalty.
45-9-116. Imitation dangerous drugs — exemptions — rules.
45-9-117 through 45-9-120 reserved.
45-9-121. Criminal possession of toxic substances — penalty.

Part 2 — Procedural Provisions

45-9-201. Repealed.
45-9-202. Alternative sentencing authority.

Chapter Cross-References
Controlled substances, Title 50, ch. 32.

Part 1

Offenses Involving Dangerous Drugs

Part Cross-References
Controlled substances, Title 50, ch. 32.

45-9-101. Criminal sale of dangerous drugs. (1) A person commits the offense of criminal sale of dangerous drugs if he sells, barters, exchanges, gives away, or offers to sell, barter, exchange, or give away or manufactures, prepares, cultivates, compounds, or processes any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal sale of an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(3) A person convicted of criminal sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinols, who has a prior conviction for criminal sale of such a drug shall be imprisoned in the state prison for a term of not less than 10 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222. Upon a third or subsequent conviction for criminal sale of such a drug, he shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222. Whenever a conviction under this subsection is for criminal sale of such a drug to a minor, the sentence shall include the restriction that the defendant be ineligible for parole and participation in the supervised release program while serving his term.

(4) A person convicted of criminal sale of dangerous drugs not otherwise provided for in subsection (2) or (3) shall be imprisoned in the state prison for a term of not less than 1 year or more than life or be fined an amount of not more than $50,000, or both.

(5) Practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section.

History: En. Sec. 4, Ch. 314, L. 1969; amd. Sec. 1, Ch. 55, L. 1973; amd. Sec. 24, Ch. 412, L. 1973; amd. Sec. 1, Ch. 258, L. 1974; amd. Sec. 1, Ch. 359, L. 1977; amd. Sec. 1, Ch. 584, L. 1977; R.C.M. 1947, 54-132; amd. Sec. 1, Ch. 587, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 9, Ch. 583, L. 1981; amd. Sec. 1, Ch. 393, L. 1983; amd. Sec. 16, Ch. 3, L. 1985.

Compiler's Comments

1985 Amendment: In (2) changed "50-32-101(18)" to "50-32-101(19)".

1983 Amendment: In (3), increased minimum sentence for second offense from 5 to 10 years and for third offense from 10 to 20 years.

1981 Amendments: Section 7, Ch. 198, L. 1981, provided in part:

"(2) There is added to those sections listed in subsection (1) of section 1 [46-18-231], following the language in those sections specifying the term of imprisonment for which an offender may be imprisoned, the words "and may be fined not more than $50,000" or other similar language allowing the court to fine the offender a maximum of $50,000 in addition to a term of imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also

enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Chapter 583 substituted "supervised release program" for "prisoner furlough program" near the end of (3).

Cross-References

Criminal jurisdiction of Justices' Courts, 3-10-303.

Offense defined, 45-2-101.

Limitation on deferral or suspension of sentence, 46-18-201.

Controlled substances, Title 50, ch. 32.

Dangerous drug defined, 50-32-101.

Marijuana defined, 50-32-101.

Opiate defined, 50-32-101.

45-9-102. Criminal possession of dangerous drugs. (1) A person commits the offense of criminal possession of dangerous drugs if he possesses any dangerous drug, as defined in 50-32-101.

(2) Any person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than $100 or more than $500 and by imprisonment in the county jail for not more than 6 months. The minimum fine must be imposed as a condition of a suspended or deferred sentence. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed $1,000 or imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 3 years or both such fine and imprisonment.

(3) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than $50,000, except as provided in 46-18-222.

(4) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsection (2) or (3) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed $50,000, or both.

(5) A person of the age of 21 years or under convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence of imprisonment.

(6) Ultimate users and practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section.

History: En. Sec. 5, Ch. 314, L. 1969; amd. Sec. 1, Ch. 228, L. 1971; amd. Sec. 26, Ch. 412, L. 1973; amd. Sec. 1, Ch. 174, L. 1974; amd. Sec. 2, Ch. 359, L. 1977; amd. Sec. 2, Ch. 584, L. 1977; R.C.M. 1947, 54-133; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 2, Ch. 612, L. 1983; amd. Sec. 17, Ch. 3, L. 1985.

Compiler's Comments

1985 Amendment: In (3) changed "50-32-101(18)" to "50-32-101(19)".

1983 Amendment: In (2), substituted present first offense punishment for "punishable by a fine not to exceed $1,000 or imprisonment in the county jail for a term not to exceed 1 year or both such fine and imprisonment"; and in (5) inserted "of imprisonment" at end.

1981 Amendments: Section 7, Ch. 198, L. 1981, provided in part:

"(2) There is added to those sections listed in subsection (1) of section 1 [46-18-231], following the language in those sections specifying the term of imprisonment for which an offender may be imprisoned, the words "and may be fined not more than $50,000" or other similar language allowing the court to fine the offender a maximum of $50,000 in addition to a term of imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of

imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Knowingly defined, 45-2-101.
Offense defined, 45-2-101.
Possession defined, 45-2-101.
Alternative sentencing authority, 45-9-202.
Limitation on deferral or suspension of sentence, 46-18-201.
Dismissal after deferred imposition of sentence, 46-18-204.
Dangerous drug defined, 50-32-101.
Marijuana defined, 50-32-101.
Opiate defined, 50-32-101.

45-9-103. Criminal possession with intent to sell. (1) A person commits the offense of criminal possession with intent to sell if he possesses with intent to sell any dangerous drug as defined in 50-32-101. No person commits the offense of criminal possession with intent to sell marijuana unless he possesses 1 kilogram or more.

(2) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), with intent to sell shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) A person convicted of criminal possession with intent to sell not otherwise provided for in subsection (2) shall be imprisoned in the state prison for a term of not more than 20 years or be fined an amount not to exceed $50,000, or both.

(4) Practitioners and agents under their supervision acting in the course of a professional practice as defined by 50-32-101 are exempt from this section.

History: En. 54-133.1 by Sec. 1, Ch. 545, L. 1975; amd. Sec. 3, Ch. 584, L. 1977; R.C.M. 1947, 54-133.1; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 18, Ch. 3, L. 1985.

Compiler's Comments

1985 Amendment: In (2) changed "50-32-101(18)" to "50-32-101(19)".

1981 Amendments: Section 7, Ch. 198, L. 1981, provided in part:

"(2) There is added to those sections listed in subsection (1) of section 1 [46-18-231], following the language in those sections specifying the term of imprisonment for which an offender may be imprisoned, the words "and may be fined not more than $50,000" or other similar language allowing the court to fine the offender a maximum of $50,000 in addition to a term of imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this

section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Knowingly defined, 45-2-101.

Offense defined, 45-2-101.

Possession defined, 45-2-101.

Limitation on deferral or suspension of sentence, 46-18-201.

Controlled substances, Title 50, ch. 32.

Dangerous drug defined, 50-32-101.

Marijuana defined, 50-32-101.

Opiate defined, 50-32-101.

45-9-104. Fraudulently obtaining dangerous drugs. A person commits the offense of fraudulently obtaining dangerous drugs if he obtains or attempts to obtain a dangerous drug, as defined in 50-32-101, by:

(1) fraud, deceit, misrepresentation, or subterfuge;

(2) falsely assuming the title of or representing himself to be a manufacturer, wholesaler, practitioner, pharmacist, owner of a pharmacy, or other person authorized to possess dangerous drugs;

(3) the use of a forged, altered, or fictitious prescription;

(4) the use of a false name or a false address on a prescription; or

(5) the concealment of a material fact.

History: En. Sec. 6, Ch. 314, L. 1969; amd. Sec. 3, Ch. 359, L. 1977; R.C.M. 1947, 54-134.

Cross-References

Obtain defined, 45-2-101.

Offense defined, 45-2-101.

Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs, 45-9-106.

Controlled substances, Title 50, ch. 32.

Dangerous drug defined, 50-32-101.

45-9-105. Altering labels on dangerous drugs. A person commits the offense of altering labels on dangerous drugs if he affixes a false, forged, or altered label to or otherwise misrepresents a package or receptacle containing a dangerous drug, as defined in 50-32-101.

History: En. Sec. 7, Ch. 314, L. 1969; amd. Sec. 4, Ch. 359, L. 1977; R.C.M. 1947, 54-135.

Cross-References

Offense defined, 45-2-101.

Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs, 45-9-106.

Controlled substances, Title 50, ch. 32.

Dangerous drug defined, 50-32-101.

45-9-106. Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs. (1) A person convicted of altering labels on dangerous drugs shall be imprisoned in the county jail for a term not to exceed 6 months.

(2) A person convicted of fraudulently obtaining dangerous drugs included in Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V in 50-32-222, 50-32-224, 50-32-226, 50-32-229, or 50-32-232 shall:

(a) upon his first conviction be imprisoned in the state prison for a term of not less than 1 year or not more than 5 years;

(b) upon his second conviction be imprisoned in the state prison for a term of not less than 5 years or not more than 10 years.

History: **En. Sec. 8, Ch. 314, L. 1969; R.C.M. 1947, 54-136; amd. Sec. 1, Ch. 389, L. 1981.**

Compiler's Comments

1981 Amendment: Deleted "fraudulently obtaining dangerous drugs or" before "altering labels" in (1); added subsection (2).

Cross-References

Fraudulently obtaining dangerous drugs, 45-9-104.

Altering labels on dangerous drugs, 45-9-105.

45-9-107. Criminal possession of precursors to dangerous drugs. (1) A person commits the offense of criminal possession of precursors to dangerous drugs if he possesses:

(a) both phenyl-2-propanone (phenylacetone) and formamide or hydroxylamine at the same time with the intent to manufacture amphetamine;

(b) both phenyl-2-propanone (phenylacetone) and methylamine or N-methylformamide at the same time with the intent to manufacture methamphetamine;

(c) both piperidine and cyclohexanone at the same time, or a combination product thereof, with the intent to manufacture phencyclidine (PCP).

(2) A person convicted of criminal possession of precursors to dangerous drugs shall be imprisoned in the state prison for a term not less than 2 years or more than 20 years or be fined an amount not to exceed $50,000, or both.

History: **En. Sec. 1, Ch. 291, L. 1979; amd. Sec. 7, Ch. 198, L. 1981.**

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Possession defined, 45-2-101.

Exemptions, 45-9-108.

Dangerous drug defined, 50-32-101.

45-9-108. Exemptions. (1) The provisions of 45-9-107 do not apply to:

(a) a drug manufacturer licensed by the state;

(b) a person authorized by rules adopted by the board of pharmacy to possess the combination of substances;

(c) a person employed by or enrolled as a student in a college or university within the state who possesses any combination of substances listed in 45-9-107 for the purposes of teaching or research which is authorized by the college or university.

(2) The board of pharmacy shall adopt, amend, or repeal rules in accordance with the Montana Administrative Procedure Act to authorize the processing of any combination of the substances listed in 45-9-107 whenever it

determines that there is a legitimate need and that the substances will be used for a lawful purpose.

History: En. Secs. 2, 3, Ch. 291, L. 1979; amd. Sec. 171, Ch. 575, L. 1981; amd. Sec. 1, Ch. 247, L. 1983.

Compiler's Comments

1983 Amendment: Substituted "board of pharmacy" for "board of pharmacists" twice.

1981 Amendment: Substituted "board of pharmacists" for "board of pharmacy" in (2).

Statement of Intent: The statement of intent adopted with Ch. 291, L. 1979, provided: "A statement of intent is required for this bill in that in section 3 it delegates authority to the Board of Pharmacy to adopt rules.

House Bill 422 defines the offense of criminal possession of precursors to certain dangerous drugs. The bill provides that its provisions do not apply to those persons or businesses which have a legitimate reason for possessing the precursors. It is possible that certain persons, businesses or research facilities may now or at a later date have a legitimate need for these precursors. The purpose for giving rulemaking authority to the Board of Pharmacy is that it can best determine whether a person, business or research facility has a legitimate need for the precursors. It will also alleviate having to amend the statute in future sessions if it appears that someone is entitled to be exempted from the criminal provisions of the statute."

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Criminal possession of precursors to dangerous drugs, 45-9-107.

45-9-109 and 45-9-110 reserved.

45-9-111. Imitation dangerous drugs — definitions. As used in 45-9-111 through 45-9-116 and 45-9-202, the following definitions apply:

(1) "Dangerous drug" has the meaning given to that term in 50-32-101.

(2) "Imitation dangerous drug" means a substance that is not a dangerous drug but that is expressly or impliedly represented to be a dangerous drug or to simulate the effect of a dangerous drug and the appearance of which, including the color, shape, size, and markings, would lead a reasonable person to believe that the substance is a dangerous drug.

(3) "Person" includes any individual, business association, partnership, or corporation.

History: En. Sec. 1, Ch. 451, L. 1983; amd. Sec. 19, Ch. 3, L. 1985.

Compiler's Comments

1985 Amendment: In introductory sentence changed "45-9-112" to "45-9-111".

45-9-112. Criminal sale of imitation dangerous drug — penalty. (1) A person commits the offense of criminal sale of an imitation dangerous drug if he knowingly or purposely sells, barters, exchanges, gives away, or offers to sell, barter, exchange, or give away any imitation dangerous drug.

(2) A person convicted of criminal sale of an imitation dangerous drug to a person 18 years of age or older shall be imprisoned in the state prison for a term of not more than 5 years and may be fined not more than $50,000.

(3) A person convicted of criminal sale of an imitation dangerous drug to a person under the age of 18 shall be imprisoned in the state prison for a term of not more than 10 years and may be fined not more than $50,000.

History: En. Sec. 2, Ch. 451, L. 1983.

45-9-113. Criminal possession of imitation dangerous drug with purpose to sell — penalty. (1) A person commits the offense of criminal possession of an imitation dangerous drug with purpose to sell if he possesses with purpose to sell any imitation dangerous drug.

(2) A person convicted of criminal possession of an imitation dangerous drug with purpose to sell shall be imprisoned in the state prison for a term of not more than 5 years and may be fined not more than $50,000.

(3) A person under 18 years of age convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence.

History: En. Sec. 3, Ch. 451, L. 1983.

45-9-114. Criminal advertisement of imitation dangerous drug — penalty. (1) A person commits the offense of criminal advertisement of an imitation dangerous drug if he knowingly or purposely places in any newspaper, magazine, handbill, or other publication or posts or distributes any advertisement or solicitation to promote the manufacture, sale, exchange, or distribution of an imitation dangerous drug.

(2) A person convicted of criminal advertisement of an imitation dangerous drug under this section is punishable by a fine not to exceed $100,000 or by imprisonment in the state prison for a term of not more than 10 years or by both such fine and imprisonment.

History: En. Sec. 4, Ch. 451, L. 1983.

45-9-115. Criminal manufacture of imitation dangerous drug — penalty. (1) A person commits the offense of criminal manufacture of an imitation dangerous drug if he knowingly or purposely manufactures, prepares, or cultivates any imitation dangerous drug.

(2) A person convicted of criminal manufacture of an imitation dangerous drug under this section is punishable by a fine not to exceed $100,000 or by imprisonment in the state prison for a term of not more than 10 years or by both such fine and imprisonment.

History: En. Sec. 5, Ch. 451, L. 1983.

45-9-116. Imitation dangerous drugs — exemptions — rules. (1) Sections 45-9-111 through 45-9-115 do not apply to:

(a) a person authorized by rules adopted by the board of pharmacy to possess with purpose to sell or sell imitation dangerous drugs;

(b) law enforcement personnel selling or possessing with purpose to sell imitation dangerous drugs while acting within the scope of their employment; and

(c) a person registered under the provisions of Title 50, chapter 32, part 3, who sells, or possesses with purpose to sell an imitation dangerous drug for use as a placebo, by that person or any other person so registered, in the course of professional practice or research.

(2) The board of pharmacy shall adopt, amend, or repeal rules in accordance with the Montana Administrative Procedure Act to authorize the possession with purpose to sell or sale of imitation dangerous drugs whenever it determines that there is a legitimate need and that the drugs will be used for a lawful purpose.

History: En. Sec. 6, Ch. 451, L. 1983; amd. Sec. 1, Ch. 247, L. 1983; amd. Sec. 20, Ch. 3, L. 1985.

Compiler's Comments

1985 Amendment: In (1) changed "45-9-112" to "45-9-111".

1983 Amendment: In (1)(a) and (2), substituted "board of pharmacy" for "board of pharmacists".

45-9-117 through 45-9-120 reserved.

45-9-121. Criminal possession of toxic substances — penalty. (1) A person commits the offense of criminal possession of a toxic substance if he inhales or ingests or possesses with the purpose to inhale or ingest, for the purpose of altering his mental or physical state, any substance with toxic effects that is not manufactured for human consumption or inhalation, including but not limited to glue, fingernail polish, paint and paint thinners, petroleum products, aerosol propellants, and chemical solvents.

(2) The provisions of subsection (1) do not apply to a bona fide institution of higher education conducting research with human volunteers pursuant to guidelines adopted by the institution or any federal or state agency.

(3) A person convicted under this section shall be imprisoned in the county jail for a term not to exceed 6 months or be fined an amount not to exceed $500, or both.

(4) The youth court has jurisdiction of any violation of subsection (1) by a person under 18 years of age.

History: En. Sec. 1, Ch. 482, L. 1983.

Part 2

Procedural Provisions

45-9-201. Repealed. Sec. 3, Ch. 612, L. 1983.

History: En. Sec. 10, Ch. 314, L. 1969; amd. Sec. 6, Ch. 359, L. 1977; R.C.M. 1947, 54-138.

45-9-202. Alternative sentencing authority. A person convicted of criminal possession of dangerous drugs, criminal sale of imitation dangerous drugs, criminal possession of imitation dangerous drugs with purpose to sell, fraudulently obtaining dangerous drugs, or altering labels on dangerous drugs, if he is shown to be an excessive or habitual user of dangerous drugs, as defined in 50-32-101, either from the face of the record or by a presentence investigation, may, in lieu of imprisonment, be committed to the custody of any institution for rehabilitative treatment for not less than 6 months or more than 2 years.

History: En. Sec. 9, Ch. 314, L. 1969; amd. Sec. 5, Ch. 359, L. 1977; R.C.M. 1947, 54-137; amd. Sec. 7, Ch. 451, L. 1983.

Compiler's Comments

1983 Amendment: Inserted "criminal sale of imitation dangerous drugs, criminal possession of imitation dangerous drugs with purpose to sell".

Cross-References

Criminal possession of dangerous drugs, 45-9-102.

Fraudulently obtaining dangerous drugs, 45-9-104.

Altering labels on dangerous drugs, 45-9-105.

Criminal sale, or possession with purpose to sell, of imitation dangerous drug, 45-9-112, 45-9-113.

CHAPTER 10

MODEL DRUG PARAPHERNALIA ACT

Part 1 — General Provisions

Section
45-10-101. Definitions.
45-10-102. Determination of what constitutes paraphernalia.

45-10-103. Criminal possession of drug paraphernalia.
45-10-104. Manufacture or delivery of drug paraphernalia.
45-10-105. Delivery of drug paraphernalia to a minor.
45-10-106. Advertisement of drug paraphernalia.
45-10-107. Exemptions.

Part 1

General Provisions

45-10-101. Definitions. (1) As used in this part, the term "drug paraphernalia" means all equipment, products, and materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a dangerous drug. It includes but is not limited to:

(a) kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant that is a dangerous drug or from which a dangerous drug can be derived;

(b) kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing dangerous drugs;

(c) isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant that is a dangerous drug;

(d) testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of dangerous drugs;

(e) scales and balances used, intended for use, or designed for use in weighing or measuring dangerous drugs;

(f) dilutents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting dangerous drugs;

(g) separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marijuana;

(h) blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding dangerous drugs;

(i) capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of dangerous drugs;

(j) containers and other objects used, intended for use, or designed for use in storing or concealing dangerous drugs;

(k) objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, or other dangerous drug as defined by 50-32-101 into the human body, such as:

(i) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(ii) water pipes;

(iii) carburetion tubes and devices;

(iv) smoking and carburetion masks;

(v) roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(vi) miniature cocaine spoons and cocaine vials;

(vii) chamber pipes;

(viii) carburetor pipes;

(ix) electric pipes;

(x) air-driven pipes;

(xi) chillums;

(xii) bongs;

(xiii) ice pipes or chillers.

(2) Words or phrases used in this part that are not defined by this section have the meaning given to them by the definitions contained in 50-32-101 unless the usage clearly indicates a different intent.

History: **En. Sec. 1, Ch. 481, L. 1981.**

45-10-102. Determination of what constitutes paraphernalia. In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(1) statements by an owner or by anyone in control of the object concerning its use;

(2) prior convictions, if any, of an owner or of anyone in control of the object, under any state or federal law relating to any controlled substance or dangerous drug;

(3) the proximity of the object, in time and space, to a direct violation of this part;

(4) the proximity of the object to dangerous drugs;

(5) the existence of any residue of dangerous drugs on the object;

(6) direct or circumstantial evidence of the intent of an owner or of anyone in control of the object to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of 45-10-103 through 45-10-106. The innocence of an owner or of anyone in control of the object as to a direct violation of 45-10-103 through 45-10-106 does not prevent a finding that the object is intended for use or designed for use as drug paraphernalia.

(7) instructions, oral or written, provided with the object concerning its use;

(8) descriptive materials accompanying the object which explain or depict its use;

(9) national and local advertising concerning its use;

(10) the manner in which the object is displayed for sale;

(11) whether the owner or anyone in control of the object is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(12) direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;

(13) the existence and scope of legitimate uses for the object in the community;

(14) expert testimony concerning its use.

History: **En. Sec. 2, Ch. 481, L. 1981.**

45-10-103. Criminal possession of drug paraphernalia. It is unlawful for any person to use or to possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug. Any person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined not more than $500, or both.

History: **En. Sec. 3, Ch. 481, L. 1981.**

45-10-104. Manufacture or delivery of drug paraphernalia. It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing or under circumstances where one reasonably should know that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug. Any person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined not more than $500, or both.

History: **En. Sec. 4, Ch. 481, L. 1981.**

45-10-105. Delivery of drug paraphernalia to a minor. Any person 18 years of age or over who violates 45-10-104 by delivering drug paraphernalia to a person under 18 years of age who is at least 3 years his junior is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 1 year, fined not more than $1,000, or both.

History: **En. Sec. 5, Ch. 481, L. 1981.**

45-10-106. Advertisement of drug paraphernalia. It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement knowing or under circumstances where one reasonably should know that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined not more than $500, or both.

History: **En. Sec. 6, Ch. 481, L. 1981.**

45-10-107. Exemptions. Practitioners and agents under their supervision acting in the course of a professional practice as defined by 50-32-101 are exempt from this part.

History: **En. Sec. 7, Ch. 481, L. 1981.**

TITLE 46

CRIMINAL PROCEDURE

Ch.
1. General Provisions.
2. Jurisdiction.
3. Venue.
4. Investigative Procedures.
5. Search and Seizure.
6. Arrest.
7. Initial Appearance of Arrested Person.
8. Right to Counsel.
9. Bail.
10. Preliminary Examination.
11. Commencement of Prosecution.
12. Arraignment of Defendant.
13. Pretrial Motions.
14. Mental Competency of Accused.
15. Production of Evidence.
16. Trial in District Court.
17. Lower Court Proceedings.
18. Sentence and Judgment.
19. Execution of Judgment.
20. Appeals.
21. Postconviction Hearing.
22. Habeas Corpus.
23. Probation, Parole, and Clemency.
24. Treatment of Victims and Witnesses.
Chapters 25 through 29 reserved.
30. Uniform Criminal Extradition Act.
31. Interstate Agreement on Detainers.

CHAPTER 1

GENERAL PROVISIONS

Part 1 — Purpose and Application of Title

Section
46-1-101. Application.
46-1-102. Purpose and construction.

Part 2 — Definitions

46-1-201. Definitions.

Part 3 — Notice to Attorney General

46-1-301. Notice to be given to attorney general when state department or board initiates or intervenes in an action.
46-1-302. Notice of appeal to be served on attorney general.

Chapter Cross-References

Publication of rules of criminal procedure, 1-11-204.

Courts and judicial officers, Title 3, ch. 1.

Court actions permitted on nonjudicial days, 3-1-302.

Subsequent applications for orders refused — contempt, 3-1-502, 3-1-503.

District Courts, Title 3, ch. 5.

Crimes, Title 45.

Part 1

Purpose and Application of Title

Part Cross-References

Administration of justice, Art. II, sec. 16, Mont. Const.

Due process, Art. II, sec. 17, Mont. Const.

Board of Crime Control, 2-15-2006, 44-4-301.

Types of actions — civil and criminal, 27-1-103.

Attorney General — criminal investigation, Title 44, ch. 2, part 1.

State system of criminal identification, Title 44, ch. 2, part 2.

Teletypewriter communications, Title 44, ch. 2, part 3.

Training coordinator for County Attorneys, Title 44, ch. 4, part 1.

Law Enforcement Academy, Title 44, ch. 10.

46-1-101. Application. This title shall govern the procedure in all the courts of Montana in all criminal proceedings except where provision for a different procedure is specifically provided by law.

History: En. 95-101 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 184, L. 1977; R.C.M. 1947, 95-101.

46-1-102. Purpose and construction. These provisions are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, and elimination of unjustifiable expense and delay.

History: En. 95-102 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-102.

Part 2

Definitions

46-1-201. Definitions. For the purposes of this title, the words and phrases described in this section have the meanings designated in this section, except when a particular context clearly requires a different meaning:

(1) "Charge" means a written statement presented to a court accusing a person of the commission of an offense and includes complaint, information, and indictment.

(2) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(3) "Court" means a place where justice is judicially administered and includes a judge thereof.

(4) "Judge" means a person who is invested by law with the power to perform judicial functions and includes court, justice of the peace, or city magistrate when a particular context so requires.

(5) "Judgment" means an adjudication by the court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.

(6) "Magistrate" is an officer having power to issue a warrant for the arrest of a person charged with an offense and includes:

(a) the justices of the supreme court;
(b) the judges of the district courts;
(c) justices of the peace;
(d) city magistrates in towns or cities.

(7) "Offense" means a violation of any penal statute of this state or of any ordinance of its political subdivisions.

(8) "Peace officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.

(9) "Sentence" is the punishment imposed on the defendant by the court.

History: En. Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-201, 95-203, 95-204, 95-205, 95-206, 95-207, 95-208, 95-209, 95-210, 95-211.

Cross-References

Definition of "magistrate" as used in MCA, 1-1-202.

Definition of "peace officer" as used in MCA, 1-1-207.

Reserve and auxiliary officers, 7-32-201.

"Offense" defined, 45-2-101.

Part 3

Notice to Attorney General

46-1-301. Notice to be given to attorney general when state department or board initiates or intervenes in an action. When a department or board of this state initiates or intervenes in an action in any court, a copy of the complaint, counterclaim, or cross-claim must be served on the attorney general.

History: En. Sec. 1, Ch. 91, L. 1979.

46-1-302. Notice of appeal to be served on attorney general. When a department or board of this state appeals from a judgment or order entered in any court of this state, a copy of the notice of appeal must be served on the attorney general.

History: En. Sec. 2, Ch. 91, L. 1979.

Cross-References

Initiation of criminal appeal by state, Title 46, ch. 20, part 2.

CHAPTER 2

JURISDICTION

Part 1 — Jurisdiction of the State

Section

46-2-101. State criminal jurisdiction.

Part 2 — Jurisdiction of the Courts

46-2-201. Jurisdiction of the district court.
46-2-202. Jurisdiction of justices' courts.
46-2-203. Jurisdiction of city courts.
46-2-204. Jurisdiction of municipal courts.

Part 1

Jurisdiction of the State

Part Cross-References

Sovereignty and jurisdiction of the state, Title 2, ch. 1.

Criminal jurisdiction of the state — national forests, 2-1-210.

State criminal jurisdiction over Flathead Indians, 2-1-301.

State criminal jurisdiction over other tribes, 2-1-302, 2-1-303, 2-1-306.

Limits on local government jurisdiction, 7-1-111.

46-2-101. State criminal jurisdiction. (1) A person is subject to prosecution in this state for an offense which he commits while either within or outside the state by his own conduct or that of another for which he is legally accountable if:

(a) the offense is committed either wholly or partly within the state;

(b) the conduct outside the state constitutes an attempt to commit an offense within the state and an act in furtherance of the offense occurs in the state; or

(c) the conduct within the state constitutes an attempt, solicitation, or conspiracy to commit in another jurisdiction an offense under the laws of this state and such other jurisdiction.

(2) An offense is committed partly within this state if either the conduct which is an element of the offense or the result which is an element occurs within the state. In homicide, the "result" is either the physical contact which causes death or the death itself, and if the body of a homicide victim is found within the state, the death is presumed to have occurred within the state.

(3) An offense which is based on an omission to perform a duty imposed by the law of this state is committed within the state, regardless of the location of the offender at the time of the omission.

(4) This state includes the land and water and the air space above such land and water with respect to which the state has legislative jurisdiction.

History: En. 95-304 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-304.

Part 2

Jurisdiction of the Courts

Part Cross-References

Jurisdiction of District Courts and other courts, Art. VII, Mont. Const.

Jurisdiction of Justices' Courts, Art. VII, sec. 5, Mont. Const.

Means to carry jurisdiction into effect, 3-1-113.

District Court jurisdiction, 3-5-302.

Jurisdiction of Justices' Courts, 3-10-303.

Jurisdiction of City Court, 3-11-102, 3-11-103.

Jurisdiction of military courts, 10-1-403, 10-1-408.

Jurisdiction of District and Justices' Courts — Alcoholic Beverage Code, 16-6-201.

Jurisdiction of District and Justices' Courts — dentistry, 37-4-328.

Youth Court Act, Title 41, ch. 5.

Jurisdiction of Youth Court, 41-5-203.

Transfer from Youth Court to District Court, 41-5-206.

Determination of court's jurisdiction, 45-1-201.

District Court jurisdiction — official misconduct, 45-7-401.

Jurisdiction of District and Justices' Courts — regulation of sale and display of contraceptives, 45-8-204.

District Court jurisdiction — supervision of milk industry, 81-23-405.

46-2-201. Jurisdiction of the district court. The district courts have jurisdiction of all public offenses not otherwise provided for.

History: En. 95-301 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-301.

Cross-References

District Court jurisdiction, Art. VII, sec. 4, Mont. Const.; 3-5-302.

Jurisdiction of District Courts — Alcoholic Beverage Code, 16-6-201.

Jurisdiction of District Courts — dentistry, 37-4-328.

Transfer from Youth Court to District Court, 41-5-206.

District Court jurisdiction — official misconduct, 45-7-401.

Jurisdiction of District Courts — regulation of sale and display of contraceptives, 45-8-204.

District Court jurisdiction — supervision of milk industry, 81-23-405.

46-2-202. Jurisdiction of justices' courts. The justices' courts have criminal jurisdiction as authorized by 3-10-303.

History: En. 95-302.1 by Sec. 2, Ch. 184, L. 1977; R.C.M. 1947, 95-302.1.

Cross-References

Jurisdiction of Justices' Courts, Art. VII, sec. 5, Mont. Const.; 3-10-303.

Jurisdiction of Justices' Courts — Alcoholic Beverage Code, 16-6-201.

Jurisdiction of Justices' Courts — dentistry, 37-4-328.

Jurisdiction of Justices' Courts — regulation of sale and display of contraceptives, 45-8-204.

Dangerous Drug Act, Title 45, ch. 9.

46-2-203. Jurisdiction of city courts. The city courts have criminal jurisdiction as authorized by 3-11-102 and 3-11-103.

History: En. 95-303 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-303(a).

Cross-References

Jurisdiction of City Courts, 3-11-102 through 3-11-104.

46-2-204. Jurisdiction of municipal courts. Municipal courts have criminal jurisdiction as authorized by 3-6-103.

History: En. 95-303 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-303(b).

CHAPTER 3

VENUE

Part 1 — General Provisions

Section

46-3-101. Place of trial — change of venue.
46-3-102. When offense committed partly in one and partly in another county.
46-3-103. When offense committed on or near county boundary.
46-3-104. When a person commits or aids and abets an offense in another county.
46-3-105. Offenses committed while in transit.
46-3-106. Offense commenced outside the state.

Part 2 — Venue for Certain Specific Crimes

46-3-201. Death and cause of death in different places.
46-3-202. Stolen property.
46-3-203. Escape from prison.
46-3-204. Bigamy.
46-3-205. Kidnapping.
46-3-206. Treason.

Part 1

General Provisions

46-3-101. Place of trial — change of venue. (1) In all criminal prosecutions the trial shall be in the county where the offense was committed unless otherwise provided by law.

(2) All objections to improper place of trial are waived by a defendant unless made before trial. If an objection is made, a hearing shall be held and the venue established before proceeding to trial.

History: En. 95-401 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-401.

Cross-References

Rights of accused and the state — change of venue, Art. II, sec. 24, Mont. Const.

46-3-102. When offense committed partly in one and partly in another county. When two or more acts are requisite to the commission of any offense or when two or more acts or offenses are committed in furtherance of a common scheme, the trial may be in any county in which any of such acts or offenses occur.

History: En. 95-402 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-402; amd. Sec. 1, Ch. 468, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "When" for "Where" at the beginning of the section; inserted "or when two or more acts or offenses are committed in furtherance of a common scheme" after "any offense"; and inserted "or offenses" after "acts" at the end of the section.

46-3-103. When offense committed on or near county boundary. Where an offense is committed on or within one-half mile of the boundary of two or more counties and it cannot be readily determined in which county the offense was committed, the offender may be tried in any of such counties.

History: En. 95-403 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-403.

46-3-104. When a person commits or aids and abets an offense in another county. Where a person in one county commits, aids, abets, or procures the commission of an offense in another county, the offender may be tried in either county.

History: En. 95-404 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-404.

Cross-References

When a person is legally accountable for the conduct of another, 45-2-302.

46-3-105. Offenses committed while in transit. If an offense is committed in, on, or against any instrument of conveyance passing within this state and it cannot readily be determined in which county the offense was committed, the offender may be tried in any county through which such instrument of conveyance has passed or in the county where the travel terminates.

History: En. 95-405 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-405.

46-3-106. Offense commenced outside the state. If the commission of an offense commenced outside the state is consummated within this state, the offender shall be tried in the county where the offense was consummated.

History: En. 95-407 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-407.

Part 2

Venue for Certain Specific Crimes

46-3-201. Death and cause of death in different places. If cause of death is inflicted in one county and the death ensues in another county, the offender may be tried in either county.

History: En. 95-406 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-406.

46-3-202. Stolen property. When a person obtains property by theft, robbery, or deceptive practices, he may be tried in any county in which he exerted control over such property.

History: En. 95-408 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 71, Ch. 359, L. 1977; R.C.M. 1947, 95-408.

46-3-203. Escape from prison. A person who escapes from prison may be tried in any county in the state.

History: En. 95-409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-409.

46-3-204. Bigamy. A person who commits the offense of bigamy may be tried in any county where the bigamous marriage or bigamous cohabitation has occurred.

History: En. 95-410 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-410.

46-3-205. Kidnapping. A person who commits the offense of kidnapping may be tried in any county in which his victim has traveled or has been confined during the course of the offense.

History: En. 95-411 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-411.

46-3-206. Treason. A person who commits the offense of treason may be tried in any county.

History: En. 95-412 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-412.

Cross-References

Treason — of what it consists, Art. II, sec. 30, Mont. Const.

Witnesses, 26-1-301.

Evidence in treason trial, 46-16-202.

CHAPTER 4

INVESTIGATIVE PROCEDURES

Part 1 — Investigation of Death—Autopsy

Section
46-4-101. Jurisdiction — death and cause of death in different counties.
46-4-102. Investigation of suspicious deaths.
46-4-103. Autopsy — when conducted, record, scope.
46-4-104. Liability of a mortuary or physician.

Part 2 — Inquests

46-4-201. Inquest — definition, when held, how conducted.
46-4-202. Summoning and swearing in of jurors — instructions.
46-4-203. Subpoenaing of witnesses.
46-4-204. Witness compelled to attend — examination.

46-4-205. Verdict of jury — form.
46-4-206. Recording and filing of testimony and proceedings.
46-4-207. Coroner's register.

Part 3 — Investigative Subpoenas

46-4-301. Issuance of subpoena.
46-4-302. Penalty for failure to obey.
46-4-303. Relief from improper subpoena.
46-4-304. Conduct of investigative inquiry.
46-4-305. Self-incrimination and immunity.
46-4-306. Applicability of other laws — costs.

Chapter Cross-References
County Coroner, Title 7, ch. 4, part 29.
Witness fees — inquests, 26-2-503.

Part 1

Investigation of Death — Autopsy

46-4-101. Jurisdiction — death and cause of death in different counties. When death occurs as a direct result of acts or events which occurred in another county, the coroner of either county shall have jurisdiction. If a conflict of jurisdiction should arise or should said coroners fail to act, the coroner of the county where the death occurred shall have the primary jurisdiction.

History: En. 95-812 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-812.

46-4-102. Investigation of suspicious deaths. (1) Whenever a coroner is informed that a death was caused by other than natural causes or that a death has occurred under circumstances such as to afford a reasonable ground to suspect that the death is the result of criminal conduct or when no physician or surgeon licensed in the state of Montana will sign a death certificate, the coroner shall make an investigation thereof.

(2) It shall be the duty of every person acquiring knowledge of such a death to report the same forthwith to the coroner of the county in which death apparently occurred.

(3) In cases where criminal conduct is suspected, the coroner shall notify the state medical examiner and one or more law enforcement agencies having jurisdiction. The law enforcement agencies so notified shall have the responsibility to investigate the case.

History: En. 95-801 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 24, Ch. 530, L. 1977; R.C.M. 1947, 95-801.

Cross-References
Office of County Coroner, Title 7, ch. 4, part 29.
Property of deceased — suicide note, 7-4-2917.

46-4-103. Autopsy — when conducted, record, scope. (1) If in the opinion of the coroner an autopsy is advisable, he shall order one and shall retain a medical examiner to perform it. Performance of autopsies is within the discretion of the coroner except that the county attorney or attorney general may require one. In ordering an autopsy the coroner shall order the body to be exhumed if it has been interred.

(2) A full record of the facts found shall be made on a form provided by the division of forensic science in triplicate, the coroner and medical examiner retaining one copy and delivering the other to the county attorney.

(3) The right to conduct an autopsy shall include the right to retain such specimens as the medical examiner performing the autopsy deems necessary.

(4) The state of Montana shall pay any expenses incurred whenever an autopsy or investigation is initiated at the request of the state medical examiner or attorney general. The county shall pay any expenses incurred whenever an autopsy or investigation is initiated at the request of the county attorney or county coroner.

History: **En. 95-802 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 104, Ch. 349, L. 1974; amd. Sec. 25, Ch. 530, L. 1977; R.C.M. 1947, 95-802.**

Cross-References

Records and findings — copies maintained by State Medical Examiner's office, 44-3-214.

46-4-104. Liability of a mortuary or physician. No person or firm owning a mortuary or any person employed in such a mortuary shall be liable for the acts of the coroner performed in the removal of any body to a mortuary or during the course of an autopsy on such body. No criminal or civil action shall arise against a licensed physician for performing an autopsy authorized by this chapter or for performing an autopsy on request of a federal officer investigating a death within a federal jurisdiction.

History: **En. 95-813 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-813; amd. Sec. 2, Ch. 492, L. 1985.**

Compiler's Comments

1985 Amendment: In second sentence, after "chapter", inserted remainder of sentence.

Cross-References

Exemption from liability for autopsy, 44-3-401.

Part 2

Inquests

Part Cross-References

Jury of inquest defined, 3-15-105.

Jurors' fees, 3-15-203.

Jurors — competency and exemptions, Title 3, ch. 15, part 3.

Jurors — penalty for nonappearance, 3-15-321.

Juries of inquest — summoning and impaneling, Title 3, ch. 15, part 8.

46-4-201. Inquest — definition, when held, how conducted. (1) An inquest is a formal inquiry into the causes of and circumstances surrounding the death of any person.

(2) The coroner shall hold an inquest only if requested to do so by the county attorney of the county in which death occurred or by the county attorney of the county in which the acts or events causing death occurred. However, when the death of any person occurs in a jail or penal institution or from the use of a firearm by a peace officer, except where criminal charges have been or will be filed, the county attorney shall direct the coroner to hold an inquest.

(3) If an inquest is held, the proceedings shall be public. The coroner shall conduct the inquest with the aid and assistance of the county attorney. Such inquest is to be held in accordance with this part.

(4) (a) A coroner who also serves as a peace officer may not conduct an inquest into the death of a person who:

(i) died in a jail or penal institution;

(ii) died while in the custody of a peace officer; or

(iii) was killed by a peace officer.

(b) If a coroner is disqualified under subsection (4)(a), the county attorney shall request a qualified coroner of a neighboring county to conduct the inquest. The expenses of a coroner fulfilling the request, including salary, must be paid by the requesting county.

History: Ap. p. Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 250, L. 1975; Sec. 95-803, R.C.M. 1947; Ap. p. Sec. 1, Ch. 196, L. 1967; Sec. 95-809, R.C.M. 1947; R.C.M. 1947, 95-803(part), 95-809; amd. Sec. 1, Ch. 343, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (4).

Code Commissioner Correction: In (4)(b), the Code Commissioner inserted "(a)" after "under subsection (4)" to precisely cite the provision referenced.

Cross-References

Jury of inquest defined, 3-15-105.

46-4-202. Summoning and swearing in of jurors — instructions. (1) For holding such inquest, the coroner must summon a jury of not more than nine persons qualified by law to serve as jurors.

(2) When six or more of the jurors attend, they must be sworn by the coroner to inquire who the person was and when, where, and by what means he came to his death and into the circumstances attending his death and to render a true verdict thereon, according to the evidence offered to them or arising from the inspection of the body.

(3) The coroner must instruct the jurors as to their duties.

History: (1)En. 95-803 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 250, L. 1975; Sec. 95-803, R.C.M. 1947; (2)En. 95-804 by Sec. 1, Ch. 196, L. 1967; Sec. 95-804, R.C.M. 1947; R.C.M. 1947, 95-803(part), 95-804; amd. Sec. 2, Ch. 343, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (3).

Cross-References

Jurors' fees, 3-15-203.

Jurors — competency and exemptions, Title 3, ch. 15, part 3.

Jurors — penalty for nonappearance, 3-15-321.

Juries of inquest — summoning and impaneling, Title 3, ch. 15, part 8.

46-4-203. Subpoenaing of witnesses. A coroner may issue subpoenas for witnesses, returnable immediately or at such time and place as he may designate, which may be served by any competent person. He shall summon and examine as a witness each person who, in his opinion or that of the jury, has any knowledge of the facts and may summon a surgeon or physician to inspect the body and give a professional opinion as to the cause of the death.

History: En. 95-805 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-805; amd. Sec. 1, Ch. 116, L. 1979.

Cross-References

Witnesses at inquests, 26-2-503.

46-4-204. Witness compelled to attend — examination. (1) A witness served with a subpoena may be compelled to attend and testify or be punished as upon a subpoena issued by a justice of the peace.

(2) The coroner shall and the county attorney may examine each witness, after which the witness may be examined by the jurors.

History: En. 95-806 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-806; amd. Sec. 3, Ch. 343, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (2).

Cross-References

Punishment for disobedience to a subpoena, 3-10-401.

Witness fees — inquests, 26-2-503.

46-4-205. Verdict of jury — form. After inspecting the body and hearing the testimony, the jury must render its verdict, which shall be by majority vote, and certify the same in writing signed by them and setting forth who the deceased person is, when, where, and by what means he came to his death, and if he was killed or his death occasioned by the act of another by criminal means, who committed the act.

History: En. 95-807 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-807.

46-4-206. Recording and filing of testimony and proceedings. The testimony of the witnesses examined before the coroner's jury must be reduced to writing by the coroner or under his direction and forthwith filed by him with the inquisition in the office of the clerk of the district court of the county. The coroner must order the inquest proceedings recorded and transcribed by a qualified stenographer. Such recording and transcribing expenses shall be paid by the county upon claims duly rendered and certified to by the coroner in the same manner as other claims against the county are paid.

History: En. 95-808 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-808.

46-4-207. Coroner's register. The county coroner shall keep an official register, in which he must enter the date of holding all inquests, the cause and circumstances of death, if known, and the name of the deceased, when known, and, when not, such description of the deceased as may be sufficient for identification.

History: En. 95-811 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-811.

Cross-References

Coroner's register, 7-4-2912.

Part 3

Investigative Subpoenas

46-4-301. Issuance of subpoena. Whenever the attorney general or a county attorney has a duty to investigate alleged unlawful activity, any justice of the supreme court or district court judge of this state may cause subpoenas to be issued commanding the persons to whom they are directed to appear before the attorney general or the county attorney and give testimony and produce such books, records, papers, documents, and other objects as may be necessary and proper to the investigation. A subpoena may issue only when it appears upon the affidavit of the attorney general or the county attorney that the administration of justice requires it to be issued.

History: En. 95-720 by Sec. 1, Ch. 486, L. 1977; R.C.M. 1947, 95-720(1).

46-4-302. Penalty for failure to obey. A person who, without just cause, fails to obey a subpoena served on him pursuant to this part is punishable for contempt of court.

History: **En. 95-720 by Sec. 1, Ch. 486, L. 1977; R.C.M. 1947, 95-720(2).**

46-4-303. Relief from improper subpoena. A person aggrieved by a subpoena issued pursuant to this part may, within a reasonable time, file a motion to dismiss the subpoena and, in the case of a subpoena duces tecum, to limit its scope. The motion shall be granted if the subpoena was improperly issued or, in the case of a subpoena duces tecum, if it is overly broad in its scope.

History: **En. 95-720 by Sec. 1, Ch. 486, L. 1977; R.C.M. 1947, 95-720(3).**

46-4-304. Conduct of investigative inquiry. (1) The attorney general or the county attorney may examine under oath all witnesses subpoenaed pursuant to this part. Testimony shall be recorded. The witness has the right to have counsel present at all times. If he does not have funds to obtain counsel, the judge or justice shall appoint counsel for him.

(2) The secrecy and disclosure provisions relating to grand jury proceedings apply to proceedings conducted under subsection (1). A person who divulges the contents of the application or the proceedings without legal privilege to do so is punishable for contempt of court.

(3) All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings conducted under this part.

History: **En. 95-721 by Sec. 2, Ch. 486, L. 1977; R.C.M. 1947, 95-721.**

46-4-305. Self-incrimination and immunity. (1) No person subpoenaed to give testimony pursuant to this part may be required to make any statement or produce any evidence which may incriminate him. The attorney general or the county attorney may, with the approval of the justice or judge who authorized the issuance of the subpoena on behalf of the state, grant any person subpoenaed immunity from the use of any compelled testimony or evidence or any information directly or indirectly derived from such testimony or evidence against that person in any criminal prosecution. Nothing in this section prohibits a prosecutor from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the prosecutor determines, in his sole discretion, that the ends of justice would be served thereby. After being granted immunity, no person may be excused from testifying on the grounds that his testimony may incriminate him. The immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena.

(2) Nothing in this part requires a witness to divulge the contents of a privileged communication unless the privilege is waived as provided by law.

History: **En. 95-722 by Sec. 3, Ch. 486, L. 1977; R.C.M. 1947, 95-722; amd. Sec. 3, Ch. 577, L. 1983.**

Compiler's Comments

1983 Amendment: In (1), in second sentence after "subpoenaed" substituted remainder of sentence and third sentence for "immunity from prosecution or punishment for or on account of any transaction or other matter concerning which the person testifies or produces evidence pursuant to the subpoena."

46-4-306. Applicability of other laws — costs. (1) The fees and mileage of witnesses subpoenaed pursuant to this part shall be the same as required in criminal actions. The state shall bear all costs, including the cost of service, when the application for the subpoena is made by the attorney general, and the appropriate county shall bear all costs, including the cost of service, when the application for the subpoena is made by a county attorney.

(2) All provisions relating to subpoenas in criminal actions apply to subpoenas issued pursuant to this part, including the provisions of 46-15-111 through 46-15-114.

History: **En. 95-723 by Sec. 4, Ch. 486, L. 1977; R.C.M. 1947, 95-723.**

Cross-References

Witness fees, Title 26, ch. 2, part 5.

CHAPTER 5

SEARCH AND SEIZURE

Part 1 — Legality and Admissibility

Section

46-5-101. Searches and seizures — when authorized.
46-5-102. Scope of search incident to arrest.
46-5-103. When search and seizure not illegal.
46-5-104. Admissibility in other proceedings.

Part 2 — Search Warrants

46-5-201. Search warrant defined.
46-5-202. Grounds for search warrant.
46-5-203. What may be seized with warrant.
46-5-204. Filing of application.
46-5-205. Who may serve warrant.
46-5-206. Service and execution of warrant.
46-5-207. When warrant may be executed.
46-5-208. Use of force in execution.
46-5-209. Detention and search of persons on premises.

Part 3 — Procedure in Regard to Property Seized

46-5-301. Return to court of things seized under search warrant.
46-5-302. Custody and disposition of things seized under search warrant.
46-5-303. Custody and disposition of things seized without search warrant.
46-5-304. Return of property seized.
46-5-305. Disposition of unclaimed property.

Part 4 — Stop and Frisk

46-5-401. Stop and frisk — when authorized.
46-5-402. Stop and frisk — procedure.

Part 5 — Roadblocks

46-5-501. Definition of temporary roadblock.
46-5-502. Authority to establish roadblocks.
46-5-503. Minimum requirements.
46-5-504. Existing law preserved.
46-5-505. Penalty.

Chapter Cross-References
Search and seizure, Art. II, sec. 11, Mont. Const.

Part 1

Legality and Admissibility

Part Cross-References
Entry and inspection by county dutch elm tree inspector, 7-22-116.
Search of student rooms at university, 20-25-513.
Powers of Game Wardens — search and arrest, 87-1-506.

46-5-101. Searches and seizures — when authorized. A search of a person, object, or place may be made and instruments, articles, or things may be seized in accordance with the provisions of this chapter when the search is made:

(1) as an incident to a lawful arrest;

(2) with the consent of the accused or of any other person who is lawfully in possession of the object or place to be searched or who is believed upon reasonable cause to be in such lawful possession by the person making the search;

(3) by the authority of a valid search warrant;

(4) under the authority and within the scope of a right of lawful inspection granted by law.

History: En. 95-701 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-701.

Cross-References
Unreasonable searches and seizures prohibited, Art. II, sec. 11, Mont. Const.

46-5-102. Scope of search incident to arrest. When a lawful arrest is effected, a peace officer may reasonably search the person arrested and the area within such person's immediate presence for the purpose of:

(1) protecting the officer from attack;

(2) preventing the person from escaping;

(3) discovering and seizing the fruits of the crime; or

(4) discovering and seizing any persons, instruments, articles, or things which may have been used in the commission of or which may constitute evidence of the offense.

History: En. 95-702 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-702.

46-5-103. When search and seizure not illegal. No search and seizure, whether with or without warrant, shall be held to be illegal as to a defendant if:

(1) the defendant has disclaimed any right to or interest in the place or object searched or the instruments, articles, or things seized;

(2) no right of the defendant has been infringed by the search and seizure; or

(3) any irregularities in the proceedings do not affect the substantial rights of the accused.

History: En. 95-717 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-717.

46-5-104. Admissibility in other proceedings. Instruments, articles, or things lawfully seized are admissible as evidence upon any prosecution or proceeding whether or not the prosecution or proceeding is for the offense in connection with which the search was originally made.

History: En. 95-718 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-718.

Part 2

Search Warrants

46-5-201. Search warrant defined. A "search warrant" is an order:

(1) in writing;

(2) in the name of the state;

(3) signed by a judge;

(4) particularly describing the thing, place, or person to be searched and the instruments, articles, or things to be seized;

(5) directed to a peace officer commanding him to search for personal property and bring it before the judge.

History: En. 95-703 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-703; amd. Sec. 2, Ch. 116, L. 1979.

46-5-202. Grounds for search warrant. (1) Any judge may issue a search warrant upon the written or telephonic application of any person, made under oath or affirmation before the judge, which:

(a) states that an offense has been committed;

(b) states facts sufficient to show probable cause for issuance of the warrant;

(c) particularly describes the place, things, or persons to be searched; and

(d) particularly describes the things to be seized.

(2) Whenever the application is made by telephone, the applicant's telephonic oath or affirmation is considered to have been made before the judge, and the sworn or affirmed telephonic testimony must be electronically recorded by the judge on a recording device in the custody of the judge when the application is made. The recording must be retained in the court records and transcribed verbatim, including the time and date of recording, as soon as possible thereafter.

(3) Whenever a law enforcement officer wishes to obtain a search warrant by telephone, he shall first contact the county attorney or a deputy county attorney. If the county attorney or deputy county attorney is convinced that a warrant is justified and that the circumstances require its immediate issuance, he shall telephone the judge and state that he is convinced that the warrant should be issued by telephone. The judge shall then telephone the officer at the number provided by the county attorney or deputy county attorney, and the officer shall make his application as provided in subsection (2). If the judge approves a warrant, the officer shall sign the warrant with his own name and the judge's name. A search warrant issued upon the telephonic request of a person other than the county attorney or a deputy county attorney is not valid unless the procedure provided for in this subsection is followed.

(4) A search warrant issued upon any telephonic request is invalid unless it is subsequently signed by the issuing judge or his successor.

History: En. 95-704 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 7, Ch. 184, L. 1977; R.C.M. 1947, 95-704; amd. Sec. 3, Ch. 116, L. 1979; amd. Sec. 1, Ch. 339, L. 1979.

Cross-References

Search warrants issuable for enforcement of liquor laws, 16-6-102.

Complaint against pawnbrokers or junk dealers, issuance and service of search warrant, 31-1-403, 31-1-404.

Penalty for procuring search warrant by false swearing, 45-7-202.

46-5-203. What may be seized with warrant. A search warrant may authorize the seizure of the following:

(1) contraband;

(2) any instruments, articles, or things which are the fruits of, have been used in the commission of, or may constitute evidence of any offense;

(3) any person who has been kidnapped in violation of the laws of this state or who has been kidnapped in another jurisdiction and is now concealed within this state.

History: En. 95-705 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-705.

46-5-204. Filing of application. The application on which the warrant is issued shall be retained by the judge but need not be filed with the clerk of the court or with the court, if there is no clerk, until the warrant has been executed or has been returned "not executed".

History: En. 95-706 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-706.

46-5-205. Who may serve warrant. A search warrant may in all cases be served by any of the officers mentioned in its direction but by no other person except in aid of the officer on his requiring it, he being present and acting in its execution.

History: En. 95-707 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-707.

46-5-206. Service and execution of warrant. Service of a search warrant is made by exhibiting the original warrant at the place to be searched. If the warrant is executed, a duplicate copy and a receipt for all articles taken shall be left with any person from whom any instruments, articles, or things are seized or, if no person is available, the copy and receipt shall be left at the place from which the instruments, articles, or things were seized. Failure to give or leave such a receipt shall not render the evidence inadmissible in a trial.

History: En. 95-708 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-708.

46-5-207. When warrant may be executed. (1) The warrant may be executed at any time of any day or night.

(2) The warrant shall be executed within 10 days from the time of issuance. Any warrant not executed within such time shall be void and shall be returned to the court or the judge issuing the same as "not executed".

History: En. 95-711 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-711.

46-5-208. Use of force in execution. All necessary and reasonable force may be used to execute a search warrant or to effect an entry into any building or property or part thereof to execute a search warrant.

History: En. 95-709 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-709.

46-5-209. Detention and search of persons on premises. In the execution of the warrant the person executing the same may reasonably detain and search any person in the place at the time:

(1) to protect himself from attack; or

(2) to prevent the disposal or concealment of any instruments, articles, or things particularly described in the warrant.

History: En. 95-710 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-710.

Part 3

Procedure in Regard to Property Seized

46-5-301. Return to court of things seized under search warrant. The return of the warrant and all instruments, articles, and things seized shall be made promptly before the judge who issued the warrant or, if he is absent or unavailable, before the nearest available judge and shall be accompanied by a written inventory of any property taken, verified by the person executing the warrant. The judge shall, upon request, deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

History: En. 95-712 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-712.

46-5-302. Custody and disposition of things seized under search warrant. The judge before whom the instruments, articles, or things are returned shall enter an order providing for their custody or appropriate disposition pending further proceedings.

History: En. 95-713 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-713.

Cross-References

Seizure and forfeiture of unlawful cigarettes, 16-11-147.

46-5-303. Custody and disposition of things seized without search warrant. (1) Any peace officer seizing any instruments, articles, or things must give a receipt to the person from whose possession they are taken, but failure to give such a receipt shall not render the evidence seized inadmissible upon a trial.

(2) If an arrest has been made, all instruments, articles, or things seized on a search without warrant shall be delivered to the judge before whom the person arrested is taken and thereafter handled and disposed of in accordance with 46-5-301, 46-5-302, and 46-5-304. If the person arrested is released without a charge being preferred against him, all instruments, articles, or things seized from him other than contraband shall be returned to him upon release.

(3) If no arrest has been made, such instruments, articles, or things may be retained in the custody of the officer making the seizure for a time sufficient for investigation of the supposed crime, after which they must be delivered to the proper judge for disposition in accordance with 46-5-301, 46-5-302, and 46-5-304 or returned to the person from whom they were taken.

History: En. 95-714 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-714.

Cross-References

Return of crime victim's property, 46-24-206.

46-5-304. Return of property seized. (1) Any person claiming the right to possession of property seized as evidence may apply to the judge to whom it has been delivered for its return. The judge shall give such notice as he deems adequate to the county attorney and all persons who have or may have an interest in the property and shall hold a hearing to hear all claims to its true ownership.

(2) If the right to possession is proved to the judge's satisfaction, he shall order the property other than contraband returned if:

(a) the property is not needed as evidence or, if needed, satisfactory arrangements can be made for its return for subsequent use as evidence; or

(b) all proceedings in which it might be required have been completed.

History: En. 95-715 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-715.

46-5-305. Disposition of unclaimed property. If property seized as evidence is not claimed within 6 months of completion of the case for which it was seized and if after proper inquiry the judge cannot ascertain or locate any person entitled to its possession, he must order the property to be sold by the sheriff. The proceeds from the sale, after deduction of the costs of storage, preservation of the property, and the sale, must be paid into the county treasury.

History: En. 95-716 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-716; amd. Sec. 4, Ch. 116, L. 1979.

Part 4

Stop and Frisk

46-5-401. Stop and frisk — when authorized. (1) A peace officer may stop any person he observes in circumstances that give him reasonable cause to suspect that the person has committed, is committing, or is about to commit an offense involving the use or attempted use of force against a person or theft, damage, or destruction of property if the stop is reasonably necessary to obtain or verify an account of the person's presence or conduct or to determine whether to arrest the person.

(2) A peace officer may stop any person he finds near the scene of an offense that he has reasonable cause to suspect has just been committed if:

(a) he has reasonable cause to suspect that the person has knowledge of material aid to the investigation of the offense; or

(b) the stop is reasonably necessary to obtain or verify the person's identity or an account of the offense.

(3) A peace officer may stop any person in connection with an offense that he has probable cause to believe has been committed if:

(a) the offense is a felony involving the use or the attempted use of force against a person or theft, damage, or destruction of property;

(b) he has reasonable cause to suspect the person committed the felony; and

(c) (i) the stop is reasonably necessary to obtain or verify the person's identity to determine whether to arrest the person for the felony; or

(ii) the peace officer has reasonable cause to suspect that the person was present at the scene of the offense, and the stop is reasonably necessary to obtain or verify the person's identity.

History: En. 95-719 by Sec. 4, Ch. 513, L. 1973; amd. Sec. 8, Ch. 184, L. 1977; R.C.M. 1947, 95-719(1) thru (3).

46-5-402. Stop and frisk — procedure. (1) A peace officer who has lawfully stopped a person under this part may:

(a) frisk the person and take other reasonably necessary steps for protection if he has reasonable cause to suspect that the person is armed and presently dangerous to him or another person present; and

(b) take possession of any object that he discovers during the course of the frisk if he has probable cause to believe the object is a deadly weapon.

(2) A peace officer who has lawfully stopped a person under this part may demand of the person his name and his present or last address.

(3) A peace officer who has lawfully stopped a person under this part shall inform the person, as promptly as possible under the circumstances and in any case before questioning the person, that he is a peace officer, that the stop is not an arrest but rather a temporary detention for an investigation, and that upon completion of the investigation the person will be released unless he is arrested.

(4) After the authorized purpose of the stop has been accomplished or 30 minutes have elapsed, whichever occurs first, the peace officer shall allow the person to go unless he has arrested the person.

History: En. 95-719 by Sec. 4, Ch. 513, L. 1973; amd. Sec. 8, Ch. 184, L. 1977; R.C.M. 1947, 95-719(4) thru (7).

Part 5

Roadblocks

46-5-501. Definition of temporary roadblock. For the purpose of this part, a "temporary roadblock" means any structure, device, or means used by the duly elected or appointed law enforcement officers of this state and their deputies for the purpose of controlling all traffic through a point on the highway whereby all vehicles may be slowed or stopped.

History: En. 95-618 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 18, L. 1971; R.C.M. 1947, 95-618(a).

Cross-References

Inspections of vehicles by personnel of the Department of Highways, 61-9-501.

46-5-502. Authority to establish roadblocks. The duly elected or appointed law enforcement officers of this state and their deputies are hereby authorized to establish, in their respective jurisdictions or in other jurisdictions within the state, temporary roadblocks on the highways of this state for the purpose of identifying drivers, checking for driver's licenses, and apprehending persons wanted for violation of the laws of this state, of any other state, or of the United States who are using the highways of this state.

History: En. 95-618 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 18, L. 1971; R.C.M. 1947, 95-618(b).

46-5-503. Minimum requirements. For the purpose of warning and protecting the traveling public, the minimum requirements to be met by such officers establishing temporary roadblocks, if time and circumstances allow, are:

(1) the temporary roadblock must be established at a point on the highway clearly visible at a distance of not less than 100 yards in either direction;

(2) at the point of the temporary roadblock, a sign shall be placed on the center line of the highway displaying the word "stop" in letters of sufficient size and luminosity to be readable at a distance of not less than 50 yards in both directions either in daytime or darkness;

(3) at the same point of the temporary roadblock, at least one red light, which shall be a flashing or intermittent beam of light, must be placed at the side of the roadway clearly visible to the oncoming traffic at a distance of not less than 100 yards;

(4) at a distance of not less than 200 yards from the point of the temporary roadblock, warning signs must be placed at the side of the highway containing any wording of sufficient size and luminosity to warn the oncoming traffic that a "police stop" lies ahead. A burning beam light, flare, or a lantern must be placed near such signs for the purpose of attracting the attention of approaching drivers during hours of darkness. A red flag may be used for the same purpose during daylight hours.

History: En. 95-618 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 18, L. 1971; R.C.M. 1947, 95-618(c).

46-5-504. Existing law preserved. Nothing in this part shall be deemed to limit or encroach upon the existing authority of Montana law enforcement officers in the performance of their duties involving traffic control.

History: En. 95-618 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 18, L. 1971; R.C.M. 1947, 95-618(d).

46-5-505. Penalty. Any person who shall proceed or travel through a roadblock without subjecting himself to the traffic control so established shall be guilty of a misdemeanor and shall be punished by a fine of not more than $500 or by imprisonment in the county jail for not more than 6 months or by both fine and imprisonment.

History: En. 95-618 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 18, L. 1971; R.C.M. 1947, 95-618(e).

CHAPTER 6

ARREST

Part 1 — General Provisions

Section

46-6-101. Definitions.
46-6-102. Persons exempt from arrest.
46-6-103. Magistrate may order arrest.
46-6-104. Method of arrest.
46-6-105. Time of making arrest.
46-6-106. Manner of arrest without a warrant.

Part 2 — Arrest Warrants

46-6-201. Issuance of arrest warrant upon complaint.
46-6-202. Form of warrant — execution.
46-6-203. Manner of arrest with a warrant.
46-6-204. Minor irregularities in warrant.

Part 3 — Summons

46-6-301. When summons may be issued — service.
46-6-302. Form of summons.
46-6-303. When warrant issued after summons.
46-6-304. Summons to a corporation.

Part 4 — Arrest by a Peace Officer

46-6-401. Circumstances in which a peace officer makes arrests.
46-6-402. Assisting a peace officer.
46-6-403. Release by officer of person arrested.
46-6-404. Notice to appear.
46-6-405 through 46-6-410 reserved.
46-6-411. Close pursuit — arrest by officers of another state — procedure.
46-6-412. Arrest by officer of the United States customs service or immigration and naturalization service.
46-6-413 through 46-6-420 reserved.
46-6-421. Written report when no arrest made in domestic violence situation.
46-6-422. Notice of rights to victim upon arrest in domestic violence situation.

Part 5 — Arrest by a Private Person

46-6-501. Definitions.
46-6-502. When arrest by private person authorized.
46-6-503. Restrictions on arrest by merchant — liability.
46-6-504. Concealment not proof of theft.

Chapter Cross-References

Power of County Commission — rewards for felons, 7-32-2301.

Power of City or Town Council — arrests, 7-32-4301.

Escape from custody — use of force to prevent, 45-3-106.

Use of force in resisting arrest, 45-3-108.

Escape from custody — definition, 45-7-306.

Part 1

General Provisions

46-6-101. Definitions. (1) An "arrest" is taking a person into custody in the manner authorized by law.

(2) A "warrant of arrest" is a written order from a court directed to a peace officer or to some other person specifically named commanding him to arrest a person. This term includes the original warrant of arrest or a copy certified by the issuing court.

(3) A "summons" is a written order issued by the court which commands a person to appear before a court at a stated time and place.

(4) A "notice to appear" is a written direction issued by a peace officer that a person appear before a court at a stated time and place to answer an offense set forth therein.

History: En. 95-601 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-601.

Cross-References

Issuance of arrest warrant upon failure to comply with conditions of bail, 46-9-505.

46-6-102. Persons exempt from arrest. (1) Electors shall in all cases except treason, felony, or breach of the peace be privileged from arrest during their attendance at election and in going to and returning from the same.

(2) Senators and representatives shall in all cases except felony or breach of the peace be privileged from arrest during the sessions of the state legislature and in going to and returning from the same.

(3) The militia shall in all cases except treason, felony, or breach of the peace be privileged from arrest during their attendance at musters and election and in going to and returning from the same.

(4) Judges, attorneys, clerks, sheriffs, and other court officers shall be privileged from arrest while attending court and while going to and returning from court.

History: En. 95-616 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-616.

Cross-References

Treason — of what it consists, Art. II, sec. 30, Mont. Const.

Immunity of electors at polling places, Art. IV, sec. 6, Mont. Const.

Immunity of legislators from arrest, Art. V, sec. 8, Mont. Const.

46-6-103. Magistrate may order arrest. A magistrate may orally order a peace officer or private person to arrest anyone committing or attempting to commit a public offense in the presence of such magistrate.

History: En. 95-617 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-617.

46-6-104. Method of arrest. (1) An arrest is made by an actual restraint of the person to be arrested or by his submission to the custody of the person making the arrest.

(2) All necessary and reasonable force may be used in making an arrest, but the person arrested shall not be subject to any greater restraint than is necessary to hold or detain him.

(3) All necessary and reasonable force may be used to effect an entry into any building or property or part thereof to make an authorized arrest.

History: En. 95-602 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-602.

46-6-105. Time of making arrest. An arrest may be made on any day and at any time of the day or night, except that a person cannot be arrested in his home or private dwelling place at night for a misdemeanor committed at some other time and place unless upon the direction of a magistrate endorsed upon a warrant of arrest. However, a person may be arrested in his home or private dwelling at night if he is being arrested pursuant to 46-6-401(2) for the offense of domestic abuse or aggravated assault against a family member or household member. A summons of a peace officer to the home or private dwelling by a family or household member constitutes an exigent circumstance for making an arrest pursuant to 46-6-401(2).

History: En. 95-607 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-607; amd. Sec. 4, Ch. 700, L. 1985.

Compiler's Comments

1985 Amendment: Inserted last two sentences.

Cross-References

Criminal offense of domestic abuse, 45-5-206.

46-6-106. Manner of arrest without a warrant. A peace officer or person making an arrest without a warrant must inform the person to be arrested of his authority, if any, of the intention to arrest him, and the cause of the arrest, except when the person to be arrested is actually engaged in the commission of or in an attempt to commit an offense or is pursued immediately after its commission or after an escape or when the giving of such information will imperil the arrest.

History: En. 95-606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-606.

Part 2

Arrest Warrants

Part Cross-References

Criminal process on United States land, Title 2, ch. 1, part 2; 2-1-307.

46-6-201. Issuance of arrest warrant upon complaint. (1) A complaint, as the basis of an arrest warrant, shall be in writing.

(2) When a complaint is presented to a court charging a person with the commission of an offense, the court shall examine upon oath the complainant and may also examine any witnesses.

(3) If it appears from the contents of the complaint and the examination of the complainant and other witnesses, if any, that there is probable cause to believe that the person against whom the complaint was made has committed an offense, a warrant shall be issued by the court for the arrest of the person complained against. The court, in its discretion, may issue a summons instead of a warrant. Upon the request of the county attorney, the court shall issue a summons instead of a warrant. More than one warrant or summons may issue on the same complaint.

History: En. 95-603 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 6, Ch. 184, L. 1977; R.C.M. 1947, 95-603(1) thru (3).

Cross-References

Setting and accepting bail under warrant of arrest, 46-9-303.

Issuance of warrant upon failure to comply with conditions of bail, 46-9-505.

46-6-202. Form of warrant — execution. (1) A warrant of arrest shall:

(a) be in writing in the name of the state of Montana or in the name of a municipality if a violation of a municipal ordinance is charged;

(b) set forth the nature of the offense;

(c) command that the person against whom the complaint was made be arrested and brought before the court issuing the warrant or, if the judge is absent or unable to act, before the nearest or most accessible court in the same county or the adjoining county;

(d) specify the name of the person to be arrested or, if his name is unknown, designate the person by any name or description by which he can be identified with reasonable certainty;

(e) state the date when issued and the municipality or county where issued; and

(f) be signed by the judge of the court with the title of his office.

(2) The warrant of arrest may specify the amount of bail.

(3) The warrant shall be directed to all peace officers in the state. It shall be executed by a peace officer and may be executed in any county of the state. However, warrants issued for the violation of city ordinances cannot be executed outside the city limits, except as otherwise provided by 7-32-4301 and 7-32-4302.

(4) If an arrest is made in a county other than the one in which the warrant was issued, the arrested person shall be taken without unnecessary delay before the nearest and most accessible judge in the county where the arrest was made or the adjoining county.

History: En. 95-603 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 6, Ch. 184, L. 1977; R.C.M. 1947, 95-603(4) thru (6).

Cross-References

Bail set in warrant — acceptance by peace officer, 46-9-303.

46-6-203. Manner of arrest with a warrant. When making an arrest pursuant to a warrant, a peace officer shall inform the person to be arrested of the officer's authority, of the intention to arrest him, of the cause of the arrest, and of the fact that a warrant has been issued for his arrest, except when he flees or forcibly resists before the peace officer has an opportunity to so inform him or when the giving of such information will imperil the arrest. The peace officer need not have the warrant in his possession at the time of the arrest, but after the arrest the warrant must be shown to the person arrested as soon as practicable if such person so requests.

History: En. 95-604 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-604; amd. Sec. 5, Ch. 116, L. 1979.

46-6-204. Minor irregularities in warrant. No warrant of arrest shall be dismissed nor shall any person in custody for an offense be discharged from such custody because of technical irregularities not affecting the substantial rights of the accused.

History: En. 95-605 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-605.

Part 3

Summons

46-6-301. When summons may be issued — service. (1) When authorized to issue a warrant of arrest, a court may in lieu thereof issue a summons.

(2) The summons may be personally served in the same manner as the summons in a civil action.

History: En. 95-612 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-612(a), (c).

46-6-302. Form of summons. The summons shall:

(1) be in writing in the name of the state of Montana;

(2) state the name of the person summoned and his address, if known;

(3) set forth the nature of the offense;

(4) state the date when issued and the municipality or county where issued;

(5) be signed by the judge of the court with the title of his office; and

(6) command the person to appear before a court at a certain time and place.

History: **En. 95-612 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-612(b).**

46-6-303. When warrant issued after summons. Upon failure of the person summoned to appear, the magistrate shall issue a warrant of arrest. If after issuing a summons the magistrate becomes satisfied that the person summoned will not appear as commanded by the summons, he may at once issue a warrant of arrest.

History: **En. 95-613 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-613.**

46-6-304. Summons to a corporation. (1) Upon a charge filed against a corporation for the commission of an offense, the court shall issue a summons setting forth the nature of the offense and commanding the corporation to appear before the court at a certain time and place.

(2) The summons for the appearance of a corporation may be served in the manner provided for service of summons upon a corporation in a civil action.

(3) If after being summoned the corporation does not appear, a plea of not guilty shall be entered by the court having jurisdiction to try the offense for which the summons was issued and such court shall proceed to trial and judgment without further process.

History: **En. 95-615 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-615.**

Part 4

Arrest by a Peace Officer

Part Cross-References

Duty of Police Chief to arrest, 7-32-4105.

Offenses for which patrolmen can make arrests, 44-1-1001.

Powers of Game Wardens — search and arrest, 87-1-506.

46-6-401. Circumstances in which a peace officer makes arrests. (1) A peace officer may arrest a person when:

(a) he has a warrant commanding that such person be arrested;

(b) he believes on reasonable grounds that a warrant for the person's arrest has been issued in this state;

(c) he believes on reasonable grounds that a felony warrant for the person's arrest has been issued in another jurisdiction; or

(d) he believes on reasonable grounds that the person is committing an offense or that the person has committed an offense and the existing circumstances require his immediate arrest.

(2) A peace officer may arrest a person anywhere, including his place of residence, if the peace officer has probable cause to believe the person is committing or has committed domestic abuse or aggravated assault against a family member or household member even though the offense did not take place in the presence of the peace officer. A summons of a peace officer to a place of residence by a family or household member constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in domestic abuse cases involving injury to the victim, use or threatened use of a

weapon, violation of a restraining order, or other imminent danger to the victim.

History: En. 95-608 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; R.C.M. 1947, 95-608; amd. Sec. 5, Ch. 700, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (2).

Cross-References

Reserve and auxiliary officers, 7-32-201.

Criminal offense of domestic abuse, 45-5-206.

46-6-402. Assisting a peace officer. (1) A peace officer making a lawful arrest may command the aid of persons 18 years of age or older.

(2) A person commanded to aid a peace officer shall have the same authority to arrest as that officer.

(3) A person commanded to aid a peace officer in making an arrest shall not be civilly liable for any reasonable conduct in aid of the officer.

History: En. 95-609 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 60, Ch. 535, L. 1975; R.C.M. 1947, 95-609.

Cross-References

Failure to aid a peace officer, 45-7-304.

46-6-403. Release by officer of person arrested. A peace officer having custody of a person arrested without a warrant is authorized to release the person without requiring him to appear before a court when the officer is satisfied that there are no grounds for criminal complaint against the person arrested.

History: En. 95-610 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-610.

46-6-404. Notice to appear. (1) Whenever a peace officer is authorized to arrest a person without a warrant, he may instead issue to such person a notice to appear.

(2) The notice shall:

(a) be in writing;

(b) state the name of the person and his address, if known;

(c) set forth the nature of the offense;

(d) be signed by the officer issuing the notice; and

(e) direct the person to appear before a court at a certain time and place.

(3) Upon failure of the person to appear, a summons or warrant of arrest may issue.

History: En. 95-614 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-614.

46-6-405 through 46-6-410 reserved.

46-6-411. Close pursuit — arrest by officers of another state — procedure. (1) Any peace officer of another state of the United States who enters this state in close pursuit and continues within this state in such close pursuit of a person in order to arrest him shall have the same authority to arrest and hold in custody such person as peace officers of this state have to arrest and hold in custody a person on the ground that he has committed a crime in this state.

(2) If an arrest is made in this state by an officer of another state in accordance with the provisions of subsection (1), he shall without unnecessary delay take the person arrested before a judge of a court of record, who shall

conduct a hearing for the sole purpose of determining if the arrest was in accordance with the provisions of subsection (1) and not of determining the guilt or innocence of the arrested person. If the judge determines that the arrest was in accordance with such provisions, he shall commit the person arrested to the custody of the officer making the arrest, who shall without unnecessary delay take him to the state from which he fled. If the judge determines that the arrest was unlawful, he shall discharge the person arrested.

(3) Subsection (1) shall not be construed so as to make unlawful any arrest in this state which would otherwise be lawful.

(4) For the purpose of this section, the word "state" shall include the District of Columbia.

(5) This section may be cited as the "Uniform Act on Close Pursuit".

History: En. 95-619 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-619(part).

46-6-412. Arrest by officer of the United States customs service or immigration and naturalization service. An officer of the United States customs service or immigration and naturalization service may make an arrest without a warrant if the officer is on duty and one or more of the following situations exist:

(1) A person commits or attempts to commit an offense in the officer's presence.

(2) The officer believes on reasonable grounds that the person is committing an offense or that the person committed an offense and the circumstances require his immediate arrest.

(3) The officer believes on reasonable grounds that a warrant for the person's arrest has been issued in this state.

(4) The officer believes on reasonable grounds that a felony warrant for the person's arrest has been issued in another jurisdiction.

History: En. Sec. 1, Ch. 107, L. 1983.

Cross-References

Sovereignty and jurisdiction of the state, 2-1-102.

46-6-413 through 46-6-420 reserved.

46-6-421. Written report when no arrest made in domestic violence situation. When a peace officer is called to the scene of a reported incident of domestic violence but he does not make an arrest, he shall file a written report with the officer commanding the law enforcement agency employing him, setting forth the reason or reasons for his decision.

History: En. Sec. 2, Ch. 700, L. 1985.

Cross-References

Criminal offense of domestic abuse, 45-5-206.

46-6-422. Notice of rights to victim upon arrest in domestic violence situation. Whenever a peace officer arrests a person for domestic abuse, as defined in 45-5-206, if the victim is present, the officer shall advise the victim of the availability of a shelter or other services in the community and give the victim immediate notice of any legal rights and remedies available. The notice must include furnishing the victim with a copy of the following statement:

"IF YOU ARE THE VICTIM OF DOMESTIC ABUSE, the county attorney's office can file criminal charges against your abuser. You have the right to go to court and file a petition requesting any of the following orders for relief:

(1) an order restraining your abuser from abusing you;

(2) an order directing your abuser to leave your household;

(3) an order preventing your abuser from transferring any property except in the usual course of business;

(4) an order awarding you or the other parent custody of or visitation with a minor child or children;

(5) an order restraining your abuser from molesting or interfering with minor children in your custody; or

(6) an order directing the party not granted custody to pay support of minor children or to pay support of the other party if there is a legal obligation to do so".

History: En. Sec. 3, Ch. 700, L. 1985.

Part 5

Arrest by a Private Person

46-6-501. Definitions. As used in this part, the following definitions apply:

(1) "Concealment" means any act or deception done purposely or knowingly upon or outside the premises of a wholesale or retail store or other mercantile establishment with the intent to deprive the merchant of all or part of the value of the merchandise. The following acts or deceptive conduct shall be prima facie evidence of concealment:

(a) concealing merchandise upon the person or in a container or otherwise removing such merchandise from full view while upon the premises;

(b) removing, changing, or altering any price tag;

(c) transferring or moving any merchandise upon the premises to obtain a lower price than the merchandise was offered for sale by the merchant; or

(d) abandoning or disposing of any merchandise in such a manner that the merchant will be deprived of all or part of the value of the merchandise;

(2) "Shoplifting" means the theft of any goods offered for sale by a wholesale or retail store or other mercantile establishment.

History: En. 95-611.1 by Sec. 1, Ch. 274, L. 1974; R.C.M. 1947, 95-611.1.

Cross-References

Control of shoplifting, 7-32-4303.

46-6-502. When arrest by private person authorized. A private person may arrest another when:

(1) he believes on reasonable grounds that an offense is being committed or attempted in his presence;

(2) a felony has in fact been committed and he believes on reasonable grounds that the person arrested has committed it; or

(3) he is a merchant, as defined in 30-11-301, and has probable cause to believe the other is shoplifting in the merchant's store.

History: En. 95-611 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 274, L. 1974; R.C.M. 1947, 95-611(part).

Cross-References

Limitation on arrest authority of auxiliary officer, 7-32-233.

46-6-503. Restrictions on arrest by merchant — liability. (1) A merchant acting under 46-6-502 may stop and temporarily detain the suspected shoplifter. The merchant in such event:

(a) shall promptly inform the person that the stop is for investigation of shoplifting and that upon completion of the investigation the person will be released or turned over to the custody of a peace officer;

(b) may demand of the person his name and his present or last address and may question the person in a reasonable manner for the purpose of ascertaining whether or not such person is guilty of shoplifting;

(c) may take into possession any merchandise for which the purchase price has not been paid and which is in the possession of the person or has been concealed from full view; and

(d) may place the person under arrest or request the person to remain on the premises until a peace officer arrives.

(2) Any stop, detention, questioning, or recovery of merchandise under 46-6-502(3) and this section shall be done in a reasonable manner and time. Unless evidence of concealment is obvious and apparent to the merchant, 46-6-502 and this section shall not authorize a search of the detained person other than a search of his coat or other outer garments and any package, briefcase, or other container, unless the search is done by a peace officer under proper legal authority. After the purpose of a stop has been accomplished or 30 minutes have elapsed, whichever occurs first, the merchant shall allow the person to go unless the person is arrested and turned over to the custody of a police officer.

(3) Such stop and temporary detention, with or without questioning or removal of merchandise, when done by a merchant in compliance with the law, shall not constitute an unlawful arrest or search. A merchant stopping, detaining, or arresting a person on the belief that such person is shoplifting is not liable for damages to such person unless the merchant acts with malice, either actual or implied, or contrary to the provisions of this law.

History: En. 95-611 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 274, L. 1974; R.C.M. 1947, 95-611(part).

Cross-References

Limitation on arrest authority of auxiliary officer, 7-32-233.

46-6-504. Concealment not proof of theft. Concealment of merchandise shall not constitute proof of the commission of the offense of theft.

History: En. 95-611.2 by Sec. 2, Ch. 274, L. 1974; R.C.M. 1947, 95-611.2.

CHAPTER 7

INITIAL APPEARANCE OF ARRESTED PERSON

Part 1 — General Provisions

Section

46-7-101. Bringing arrested person before a court.
46-7-102. Duty of the court at initial appearance.
46-7-103. Preliminary hearing in justice's court.

Part 1

General Provisions

46-7-101. Bringing arrested person before a court. (1) Any person making an arrest under a warrant shall take the arrested person without unnecessary delay before the judge issuing the warrant or, if he is absent or unable to act, before the nearest or most accessible judge of the same county. If an arrest is made in a county other than the one in which the warrant was issued, the arrested person shall be taken without unnecessary delay before the nearest and most accessible judge in the county where the arrest was made.

(2) Any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest or most accessible judge in the same county, and a complaint stating the charges against the arrested person shall be filed forthwith.

History: En. 95-901 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-901.

46-7-102. Duty of the court at initial appearance. (1) The judge shall inform the defendant:

(a) of the charge against him;

(b) of his right to counsel;

(c) of his right to have counsel assigned by a court of record in accordance with the provisions of 46-8-101;

(d) that he is not required to make a statement and that any statement made by him may be offered in evidence at his trial.

(2) The judge shall admit the defendant to bail in accordance with the provisions of this title.

History: En. 95-902 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-902(part).

Cross-References

Right to counsel, 46-8-101.

Bail provisions, Title 46, ch. 9.

Court to advise defendant of rights, 46-12-202.

Right to counsel — sentencing hearing, 46-18-223.

Right to counsel — parole hearing, 46-23-204.

Court to advise defendant of rights — extradition proceedings, 46-30-217.

46-7-103. Preliminary hearing in justice's court. After the initial appearance a justice's court shall, within a reasonable time, hold a preliminary examination unless the defendant waives a preliminary examination, the district court has granted leave to file an information, an indictment has been returned, or the case is triable in justice's court.

History: En. 95-902 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-902(part).

Cross-References

Justices' Courts' jurisdiction — preliminary hearings, 3-10-303.

Definition of preliminary examination, 46-10-101.

CHAPTER 8

RIGHT TO COUNSEL

Part 1 — Extent of Right—Indigency Repayment of Costs

Section
46-8-101. Right to counsel.
46-8-102. Waiver of counsel.
46-8-103. Duration of appointment.
46-8-104. Appointment after trial.
46-8-105 through 46-8-110 reserved.
46-8-111. Eligibility for court-appointed counsel.
46-8-112. Informing defendant regarding false swearing of oath on financial statement — repayment of costs of counsel.
46-8-113. Payment of costs of court-appointed counsel by defendant — condition of sentence.
46-8-114. Time and method of payment of costs.
46-8-115. Effect of nonpayment of costs.

Part 2 — Compensation of Assigned Counsel

46-8-201. Remuneration of appointed counsel.
46-8-202. Public defender's office.

Chapter Cross-References

Rights of accused, Art. II, sec. 24, Mont. Const.

Part 1

Extent of Right — Indigency Repayment of Costs

46-8-101. Right to counsel. (1) Every defendant brought before the court must be informed by the court that it is his right to have counsel before proceeding and must be asked if he desires the aid of counsel.

(2) The defendant, if charged with a felony, must be advised that counsel will be furnished at state expense if he is unable to employ counsel as determined under the provisions of 46-8-111. If the offense charged is a felony and if the defendant desires counsel and is unable to employ counsel, a court must assign counsel to defend him.

(3) If the offense charged is a misdemeanor and if the defendant desires counsel and is unable to employ counsel, a court in the interest of justice may assign counsel to defend him.

History: En. 95-1001 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1001; amd. Sec. 1, Ch. 415, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "of record" after "court" in the second sentence of (2) and in the first sentence of (3); added "as determined under the provisions of 46-8-111" at the end of the first sentence of (2).

Cross-References

Rights of the accused, Art. II, sec. 24, Mont. Const.

Duty of court to advise at initial appearance, 46-7-102.

Right to counsel — sentencing hearing, 46-18-223.

Right to counsel — parole hearing, 46-23-204.

Court to advise defendant of rights — extradition proceedings, 46-30-217.

46-8-102. Waiver of counsel. A defendant may waive his right to counsel, except that in all felony cases where the defendant is under 18 years of age, the defendant shall be represented by counsel at every stage of the proceedings following the filing of a petition under 41-5-501.

History: En. 95-1002 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1002; amd. Sec. 2, Ch. 386, L. 1979.

46-8-103. Duration of appointment. Where counsel has been assigned, such assignment shall be effective until final judgment, including any proceeding upon direct appeal, unless relieved by order of the court.

History: En. 95-1003 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1003.

46-8-104. Appointment after trial. Any court of record may assign counsel to defend any defendant, petitioner, or appellant in any postconviction criminal action or proceeding if he desires counsel and is unable to employ counsel.

History: En. 95-1004 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1004.

46-8-105 through 46-8-110 reserved.

46-8-111. Eligibility for court-appointed counsel. (1) Any defendant who desires counsel and is unable to employ counsel shall submit under oath to the court at the time of his initial appearance a verified financial statement showing his financial inability to obtain counsel.

(2) Appointed counsel may not be denied to any person merely because his friends or relatives have the resources to retain counsel or because he has deposited or is capable of depositing security for his release. Counsel shall be provided to any person who is financially unable to obtain representation without substantial hardship in providing necessities to himself or his family.

History: En. Sec. 2, Ch. 415, L. 1981.

46-8-112. Informing defendant regarding false swearing of oath on financial statement — repayment of costs of counsel. The court shall inform the defendant that:

(1) if he makes a false statement under oath regarding his financial inability to obtain counsel, he may be charged with the additional offense of false swearing;

(2) he may be required to pay all or a portion of the compensation and expenses incurred by his court-appointed counsel as a part of or a condition under his sentence should he be convicted of an offense.

History: En. Sec. 3, Ch. 415, L. 1981.

46-8-113. Payment of costs of court-appointed counsel by defendant — condition of sentence. (1) Under the provisions of 46-18-201, the court may require a convicted defendant to pay the costs of court-appointed counsel as a part of or a condition under his sentence.

(2) Costs must be limited to reasonable compensation and costs incurred by the court-appointed counsel in the criminal proceeding. Costs may not include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law.

(3) The court may not sentence a defendant to pay the costs of court-appointed counsel unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(4) A defendant who has been sentenced to pay costs and who is not in contumacious default in the payment thereof may at any time petition the court that sentenced him for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or his immediate family, the court may remit all or part of the amount due in costs or modify the method of payment.

History: En. Sec. 4, Ch. 415, L. 1981.

46-8-114. Time and method of payment of costs. When a defendant is sentenced to pay the costs of court-appointed counsel, the court may order payment to be made within a specified period of time or in specified installments. Such payments shall be made to the clerk of the district court. The clerk of the district court shall disburse the payments to the county, agency, state agency, or local government unit responsible for the expenses of court-appointed counsel as provided for in 46-8-201.

History: En. Sec. 5, Ch. 415, L. 1981; amd. Sec. 1, Ch. 295, L. 1985; amd. Sec. 9, Ch. 680, L. 1985.

Compiler's Comments

1985 Amendments — Composite Section: Chapter 295 in third sentence, after "disburse the payments", substituted "to the county, agency, state agency, or local government unit" for "to the county or state agency".

Chapter 680 in last sentence, after "county", inserted "city, town". Because the term "local government unit" encompasses the terms "city" and "town", the Code Commissioner omitted from the composite as redundant the Ch. 680 amendment to this section.

46-8-115. Effect of nonpayment of costs. (1) When a defendant who is sentenced to pay the costs of court-appointed counsel defaults in payment thereof or of any installment, the court on motion of the county attorney or on its own motion may require him to show cause why his default should not be treated as contempt of court and may issue a show cause citation or a warrant of arrest for his appearance.

(2) Unless the defendant shows that his default was not attributable to an intentional refusal to obey the order of the court or to a failure on his part to make a good faith effort to make the payment, the court may find that his default constitutes civil contempt.

(3) The term of imprisonment for contempt for nonpayment of the costs of court-appointed counsel shall be set forth in the judgment and may not exceed 1 day for each $25 of the payment, 30 days if the order for payment of costs was imposed upon conviction of a misdemeanor, or 1 year in any

other case, whichever is the shorter period. A person committed for nonpayment of costs must be given credit toward payment for each day of imprisonment at the rate specified in the judgment.

(4) If it appears to the satisfaction of the court that the default in the payment of costs is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of the payment or of each installment, or revoking the order for payment or the unpaid portion thereof in whole or in part.

(5) A default in the payment of costs or any installment thereof may be collected by any means authorized by law for the enforcement of a judgment. The writ of execution for the collection of costs may not discharge a defendant committed to imprisonment for contempt until the amount of the payment for costs has actually been collected.

History: En. Sec. 6, Ch. 415, L. 1981.

Part 2

Compensation of Assigned Counsel

46-8-201. Remuneration of appointed counsel. (1) Whenever in a criminal proceeding an attorney represents or defends any person by order of the court on the ground that the person is financially unable to employ counsel, the attorney shall be paid for his services such sum as a district court or justice of the state supreme court certifies to be a reasonable compensation therefor and shall be reimbursed for reasonable costs incurred in the criminal proceeding.

(2) The expense of implementing subsection (1) is chargeable as provided in 3-5-901 to the county in which the proceeding arose, the department of commerce, or both, except that:

(a) in proceedings solely involving the violation of a city ordinance or state statute prosecuted in a municipal or city court, the expense is chargeable to the city or town in which the proceeding arose; and

(b) when there has been an arrest by agents of the department of fish, wildlife, and parks or agents of the department of justice and the charge is prosecuted by personnel of the state agency that made the charge, the expense must be borne by the prosecuting state agency.

History: En. 95-1005 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 186, L. 1973; amd. Sec. 1, Ch. 15, L. 1974; amd. Sec. 9, Ch. 184, L. 1977; R.C.M. 1947, 95-1005; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 2, Ch. 295, L. 1985; amd. Sec. 10, Ch. 680, L. 1985; amd. Sec. 8, Ch. 1, Sp. L. 1985.

Compiler's Comments

1985 Amendments: Chapter 295 in (2)(b) after "department of justice", inserted "and the charge is prosecuted by personnel of the state agency that made the charge" and at end of sentence substituted "borne by the prosecuting state agency" for "borne by the state agency causing the arrest".

Chapter 680 in (2) after "chargeable" inserted "as provided in 3-5-901" and after "arose" inserted "the office of supreme court administrator, or both".

Chapter 1, Sp. L. 1985, amended Ch. 680, L. 1985, in (2) by substituting "department of commerce" for "office of supreme court administrator".

46-8-202. Public defender's office. Any county through its board of county commissioners may provide for the creation of a public defender's office and the appointment of a salaried public defender and such assistant public defenders as may be necessary to satisfy the legal requirements in providing counsel for defendants unable to employ counsel. The costs of such office shall be at state expense payable according to procedures established under 3-5-902(1) and, to the extent those costs are not paid by the state, at county expense in accordance with 3-5-901(3) and 3-5-902(1).

History: En. 95-1006 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1006; amd. Sec. 11, Ch. 680, L. 1985.

Compiler's Comments

1985 Amendment: Substituted last sentence for former last sentence that read: "The costs of such office shall be at county expense".

CHAPTER 9

BAIL

Part 1 — Definition and Availability of Bail

Section
46-9-101. Definition and purpose.
46-9-102. Bailable offenses.
46-9-103. Bail pending sentence or appeal.
46-9-104. Bail on a new trial.
46-9-105 through 46-9-110 reserved.
46-9-111. Release on own recognizance.

Part 2 — Bail—General Procedural Provisions

46-9-201. Who may admit to bail.
46-9-202. Giving bail before another court or judge.
46-9-203. Report to county attorney concerning drug users.
46-9-204. Discharge of defendant.
46-9-205. Surrender of defendant.

Part 3 — The Amount of Bail

46-9-301. Determining the amount of bail.
46-9-302. Bail schedule for minor offenses — acceptance by peace officer.
46-9-303. Bail set in warrant — acceptance by peace officer.
46-9-304 through 46-9-310 reserved.
46-9-311. Reduction, increase, revocation, or substitution of bail.

Part 4 — Furnishing Bail

46-9-401. How bail furnished.
46-9-402. Persons prohibited from furnishing bail security.
46-9-403. Qualifying property as bail.
46-9-404. Justifying the bail.
46-9-405 through 46-9-410 reserved.
46-9-411. Definition of guaranteed arrest bond certificate.
46-9-412. Sureties for guaranteed arrest bond certificates.
46-9-413. Certification of sureties to courts — withdrawal as surety.
46-9-414. Motor vehicle violations — certificates accepted in lieu of cash.

Part 5 — Conditions of Bail—Violation Thereof

46-9-501. Form of conditions of bail.
46-9-502. Conditions performed — bail discharged.
46-9-503. Conditions not performed — forfeiture.

46-9-504. Procedure on forfeiture — restitution.
46-9-505. Issuance of arrest warrant — redetermining bail.

Chapter Cross-References
Bail, Art. II, sec. 21, Mont. Const.

Part 1

Definition and Availability of Bail

46-9-101. Definition and purpose. "Bail" is the security given for the primary purpose of insuring the presence of the defendant in a pending criminal proceeding.

History: En. 95-1101 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1101; amd. Sec. 1, Ch. 692, L. 1985.

Compiler's Comments
1985 Amendment: Near middle, inserted "primary" before "purpose".

Cross-References
District Court jurisdiction, Art. VII, sec. 4, Mont. Const.

Justice Court jurisdiction, Art. VII, sec. 5, Mont. Const.; Title 3, ch. 10, part 3.

City Court jurisdiction — concurrent with Justices' Courts, 3-11-102.

City Court jurisdiction — exclusive, 3-11-103.

Classification of criminal offenses for purpose of determining court's jurisdiction, 45-1-201.

Criminal jurisdiction of City Courts, 46-2-203.

46-9-102. Bailable offenses. (1) All persons shall be bailable before conviction, except when death is a possible punishment for the offense charged and the proof is evident or the presumption great that the person is guilty of the offense charged.

(2) On the hearing of an application for admission to bail made before or after indictment or information for a capital offense, the burden of showing that the proof is evident or the presumption great that the defendant is guilty of the offense is on the state.

History: En. 95-1108 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1108.

Cross-References
Bailable offenses, Art. II, sec. 21, Mont. Const.

Duty of judge to admit defendant to bail in accordance with law, 46-7-102.

46-9-103. Bail pending sentence or appeal. (1) (a) A person intending to appeal from a judgment imposing a fine only or from any judgment rendered by a justice's or city court must be admitted to bail.

(b) A person found guilty of an offense and awaiting imposition or execution of sentence or a person found guilty of an offense and sentenced to a term of imprisonment who has filed an appeal may be admitted to bail only if the judge finds that the person is not likely to flee and does not pose a danger to the safety of any other person or the community.

(2) A person found guilty of the offense of deliberate homicide is presumed to pose a danger to the safety of the community, which presumption is rebuttable.

History: En. 95-1109 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1109; amd. Sec. 1, Ch. 207, L. 1979; amd. Sec. 2, Ch. 692, L. 1985.

Compiler's Comments
1985 Amendment: Substituted present language of (1) and (2) for former text that read: "(1) After conviction of an offense not punishable by death, a defendant who intends to appeal may be admitted to bail:

(a) as a matter of right, from a judgment imposing a fine only or any judgment rendered by a justice's or city court;
(b) as a matter of discretion in all other cases.

(2) A defendant convicted of the offense of deliberate homicide is presumed to be a danger to others and not entitled to be admitted to bail, which presumption is rebuttable".

46-9-104. Bail on a new trial. If the judgment of conviction is reversed and the cause remanded for a new trial, the trial court may order that the bail stand pending such trial or substitute, reduce, or increase bail.
History: **En. 95-1119 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 12, Ch. 184, L. 1977; R.C.M. 1947, 95-1119.**

46-9-105 through 46-9-110 reserved.

46-9-111. Release on own recognizance. Any person in custody, if otherwise eligible for bail, may be released on his personal recognizance subject to such conditions as the court may reasonably prescribe to assure his appearance when required. Any person released as herein provided shall be fully apprised by the court of the penalty provided for failure to comply with the terms of his recognizance.
History: **En. 95-1106 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1106.**

Part 2

Bail — General Procedural Provisions

46-9-201. Who may admit to bail. Any judge may admit any defendant properly appearing before him in such proceeding to bail. When bound over to any court or judge having jurisdiction of the offense charged, bail shall be continued provided the court or judge having jurisdiction may increase, reduce, or substitute bail. On appeal, any judge before whom the trial was had or any judge having the power to issue a writ of habeas corpus may admit the defendant to bail.
History: **En. 95-1102 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1102(a).**

46-9-202. Giving bail before another court or judge. The defendant, when arrested for a bailable offense, must be taken without unnecessary delay before the nearest or most accessible judge in order that bail may be fixed. If the defendant is brought before a judge other than the court in which the charge is pending, the judge must establish and accept bail and set the time for the appearance of the defendant in the court in which the charge is pending. Upon acceptance of bail, the judge must deliver the bail without delay to the court in which the charge is pending.
History: **En. 95-1105 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1105.**

46-9-203. Report to county attorney concerning drug users. A city judge, judge of a municipal court, or justice of the peace shall report immediately to the county attorney of the county wherein his court is located any knowledge or information acquired by him in a trial of a cause or hearing before him, which knowledge or information shows or tends to show that any person is a drug user or drug addict. If such person is under arrest or liberated on bail at the time the knowledge or information is acquired, such person may not be liberated, if under arrest, or the bail discharged by the judge or justice of the peace until the report is made to the county attorney.

History: **En. Sec. 10, Ch. 202, L. 1921; re-en. Sec. 3198, R.C.M. 1921; re-en. Sec. 3198, R.C.M. 1935; R.C.M. 1947, 66-1520; amd. Sec. 6, Ch. 116, L. 1979.**

46-9-204. Discharge of defendant. Upon allowance and acceptance of bail the defendant, if he is in custody, must be discharged.

History: **En. 95-1102 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1102(b).**

46-9-205. Surrender of defendant. (1) (a) At any time before the forfeiture of bail, the defendant may surrender himself to the officer to whose custody he was committed at the time of giving bail.

(b) At any time before the forfeiture of bail, the sureties or surety company may surrender the defendant to the officer to whose custody he was committed and for this purpose may themselves arrest the defendant or by written authority endorsed on a certified copy of the undertaking may empower any person of suitable age and discretion to do so.

(2) The officer must detain the defendant in his custody as upon commitment and shall file a certificate in the court having jurisdiction of the defendant acknowledging the surrender. Such court may then order the bail exonerated.

History: **En. 95-1115 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1115.**

Part 3

The Amount of Bail

46-9-301. Determining the amount of bail. In all cases that bail is determined to be necessary, bail must be reasonable in amount and the amount shall be:

(1) sufficient to ensure the presence of the defendant in a pending criminal proceeding;

(2) sufficient to assure compliance with the conditions set forth in the bail;

(3) sufficient to protect any person from bodily injury;

(4) not oppressive;

(5) commensurate with the nature of the offense charged;

(6) considerate of the financial ability of the accused;

(7) considerate of the defendant's prior record;

(8) considerate of the length of time the defendant has resided in the community and of his ties to the community;

(9) considerate of the defendant's family relationships and ties; and

(10) considerate of the defendant's employment status.

History: **En. 95-1110 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1110; amd. Sec. 3, Ch. 692, L. 1985.**

Compiler's Comments

1985 Amendment: Inserted (1), (3), (8), (9), and (10); and in (7) at end, after "record", deleted "employment status, and family background".

Cross-References

Excessive bail prohibited, Art. II, sec. 22, Mont. Const.

46-9-302. Bail schedule for minor offenses — acceptance by peace officer. (1) A justice of the peace or city judge may, in his discretion, establish and post a schedule of cash bail for offenses, except for offenses amounting to felonies and the offense of domestic abuse.

(2) A peace officer may accept bail in behalf of the justice of the peace or city judge in accordance with the schedule. In the event the peace officer accepts bail, he shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the justice of the peace or city judge before whom the offender is to appear, and the justice of the peace or city judge shall give a receipt to the peace officer for the bail delivered.

History: En. 95-1103 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1103; amd. Sec. 6, Ch. 700, L. 1985.

Compiler's Comments

1985 Amendment: At end of (1) substituted "except for offenses amounting to felonies and the offense of domestic abuse" for "not amounting to a felony".

Cross-References

Duty of patrolman to accept bail, 44-1-1101.

Procedure for acceptance of bail by patrolman, 44-1-1102.

Criminal offense of domestic abuse, 45-5-206.

46-9-303. Bail set in warrant — acceptance by peace officer. A peace officer may accept cash bail in behalf of a judge whenever the warrant of arrest specifies the amount of bail. Whenever a peace officer accepts bail, he shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the justice of the peace or city judge before whom the offender is to appear, and the justice of the peace or city judge shall give a receipt to the peace officer for the bail delivered.

History: En. 95-1104 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 10, Ch. 184, L. 1977; R.C.M. 1947, 95-1104.

Cross-References

Warrant of arrest may specify bail, 46-6-202.

46-9-304 through 46-9-310 reserved.

46-9-311. Reduction, increase, revocation, or substitution of bail. (1) Upon application by the state or the defendant, the court before which the proceeding is pending may increase or reduce the amount of bail, substitute one bail for another, alter the conditions of the bail, or revoke bail.

(2) Reasonable notice of such application must be given to the opposing parties or their attorneys by the applicant.

History: En. 95-1111 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1111; amd. Sec. 7, Ch. 116, L. 1979.

Part 4

Furnishing Bail

46-9-401. How bail furnished. Bail may be furnished by the defendant in any of the following ways:

(1) by a deposit with the clerk of the court of an amount equal to the required bail of cash, stocks, or bonds or any combination thereof approved by the judge;

(2) by real estate situated in this state with unencumbered equity not exempt owned by the accused or sureties worth double the amount of bail;

(3) by written undertaking executed by the defendant and by two sufficient sureties; or

(4) by a commercial surety bond executed by the defendant and by a qualified agent for and on behalf of such surety company.

History: En. 95-1112 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1112.

46-9-402. Persons prohibited from furnishing bail security. No attorney-at-law and no official authorized to admit another to bail shall act as surety or furnish bail.

History: En. 95-1120 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1120.

Cross-References

Attorney not to become surety on bond, 37-61-419.

46-9-403. Qualifying property as bail. (1) If the bail is stock or bonds or both, the accused or sureties shall file a sworn schedule which must contain a list of the stocks and bonds deposited describing each in sufficient detail that it may be identified, the market value of each stock or bond, and the total market value of the stocks and bonds listed.

(2) (a) If the bail is real estate, the accused or sureties shall file a sworn schedule which must contain a legal description of the real estate, a description of any and all encumbrances on the real estate including the amount of each and the holder thereof, and the market value of the unencumbered equity owned by the affiant.

(b) A certified copy of the schedule of real estate must be filed immediately by the court in the office of the clerk and recorder of the county in which the property is situated, and the state has a lien on such real estate from the time the copy is filed. The clerk and recorder shall enter, index, and record the schedule without requiring any fee.

(3) If the bail is a written undertaking with sureties, each surety must be a resident or freeholder within the state. Each surety must be worth the amount specified in the undertaking, exclusive of property exempt from execution, but the court or magistrate on taking bail may allow more than two sureties to justify severally in amounts less than that expressed in the undertaking if the whole justification is equivalent to that of sufficient bail.

(4) If the bail is a commercial surety bond, it may be executed by any domestic or foreign surety company which is qualified to transact surety business in this state.

History: En. 95-1113 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; R.C.M. 1947, 95-1113; amd. Sec. 8, Ch. 116, L. 1979.

46-9-404. Justifying the bail. The sureties must in all cases justify by sworn affidavit that they each possess the qualifications provided in 46-9-403. The court may further examine the sufficiency of the bail, upon oath, in such manner as it may deem proper. In all cases the state may challenge the bail or the sufficiency of the sureties.

History: En. 95-1114 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1114.

46-9-405 through 46-9-410 reserved.

46-9-411. Definition of guaranteed arrest bond certificate. The term "guaranteed arrest bond certificate" means any printed card or other certificate which:

(1) is issued by an automobile club or association or insurance company to any of its members or insureds; and

(2) is signed by the member or insured and contains a printed statement that the automobile club, automobile association, or insurance company and a surety company or an insurance company authorized to transact both automobile liability insurance and surety business in the state of Montana:

(a) guarantee the appearance of the person whose signature appears on the card or certificate; and

(b) will, in the event of the failure of the person to appear in court at the time of trial, pay any fine or forfeiture imposed on the person in an amount not exceeding $100.

History: En. 95-1121 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 13, Ch. 184, L. 1977; R.C.M. 1947, 95-1121(3).

46-9-412. Sureties for guaranteed arrest bond certificates. (1) A domestic or foreign surety company which has qualified to transact surety business in this state may in any year become surety in an amount not exceeding $100 with respect to any guaranteed arrest bond certificates issued in such year by an automobile club or association or by an insurance company authorized to write automobile liability insurance within this state by filing with the commissioner of insurance an undertaking thus to become surety.

(2) The undertaking shall be in a form to be prescribed by the commissioner and shall state the following:

(a) the name and address of the automobile clubs, automobile associations, or insurance companies which issued the guaranteed arrest bond certificates with respect to which the surety company undertakes to be surety; and

(b) the unqualified obligation of the surety company to pay the fine or forfeiture in an amount not exceeding $100 of any person who, after posting a guaranteed arrest bond certificate with respect to which the surety company has undertaken to be surety, fails to make the appearance to guarantee which the guaranteed arrest bond certificate was posted.

History: En. 95-1121 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 13, Ch. 184, L. 1977; R.C.M. 1947, 95-1121(1), (2).

46-9-413. Certification of sureties to courts — withdrawal as surety. (1) The commissioner of insurance shall certify to each justice of the peace, city magistrate, and district judge the names of surety companies which have become sureties with respect to guaranteed arrest bond certificates and shall likewise immediately notify such official upon the withdrawal of such company as surety.

(2) No such withdrawal by any company shall be effective for 30 days after the filing thereof with the state insurance commissioner.

History: En. 95-1123 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1123.

46-9-414. Motor vehicle violations — certificates accepted in lieu of cash. A guaranteed arrest bond certificate with respect to which a surety company has become surety or a guaranteed arrest bond certificate issued by an insurance company authorized to transact both automobile liability insurance and surety business within this state as provided in 46-9-411 and 46-9-412 shall, when posted by the person whose signature appears thereon, be accepted in lieu of cash bail in an amount not exceeding $100 as a bail bond to guarantee the appearance of the person in any court, including municipal courts, in this state at such time as may be required by the court when the person was arrested for violation of a motor vehicle law of this state or ordinance of a municipality in this state (except for the offense of driving while intoxicated or for any felony) committed prior to the date of expiration shown on the guaranteed arrest bond certificate. A guaranteed arrest bond certificate posted as a bail bond in a court in this state is subject to the same forfeiture and enforcement provisions as bail bonds posted in criminal cases, and a guaranteed arrest bond certificate posted as a bail bond in a municipal court in this state is subject to the forfeiture and enforcement provisions of the chapter or ordinance of the particular municipality pertaining to bail bonds posted.

History: En. 95-1122 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 14, Ch. 184, L. 1977; R.C.M. 1947, 95-1122.

Part 5

Conditions of Bail — Violation Thereof

Part Cross-References
Bail-jumping, 45-7-308.

46-9-501. Form of conditions of bail. (1) If a person is admitted to bail, the conditions of bail shall be:

(a) that he will appear to answer in the court having jurisdiction on a day certain and thereafter as ordered by the court until discharged on final order of the court and will not depart from this state without leave; and

(b) any other conditions that the court may reasonably prescribe to assure his appearance as required and to protect any person from bodily injury, including but not limited to a condition that the person admitted to bail:

(i) remain in the custody of a designated person who agrees to supervise him and to report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the person will appear as required;

(ii) maintain employment or, if unemployed, actively seek employment;

(iii) maintain or commence an educational program;

(iv) abide by specified restrictions on travel;

(v) avoid all contact with an alleged victim of the crime or limit contact with a potential witness who may testify concerning the offense, except that contact which is necessary to the preparation of the defense;

(vi) report on a regular basis to a designated law enforcement agency or other pretrial services agency;

(vii) comply with a specified curfew;

(viii) refrain from possessing a firearm, destructive device, or other dangerous weapon;

(ix) refrain from the use of alcohol or a dangerous drug without a prescription from a licensed medical practitioner;

(x) undergo available medical or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose.

(2) The judge may at any time amend his order to impose additional or different conditions of release.

(3) If the defendant is admitted to bail after conviction, the conditions of bail, in addition to those set forth in subsection (1), shall be that:

(a) he will duly prosecute his appeal; and

(b) if the judgment is affirmed or the cause reversed and remanded for a new trial, he will forthwith surrender to the officer from whose custody he was bailed.

History: En. 95-1118 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 11, Ch. 184, L. 1977; R.C.M. 1947, 95-1118; amd. Sec. 4, Ch. 692, L. 1985.

Compiler's Comments

1985 Amendment: In (1) in introductory clause, after "admitted to bail", deleted "before conviction"; substituted language in (1)(b) for former (1)(b) that read: "any other conditions that the court may reasonably prescribe to assure his appearance when required"; inserted (2); and in (3) in introductory clause inserted "in addition to those set forth in subsection (1)", and deleted (3)(b) and (3)(c) (former (2)(b) and (2)(c)) that read: "(b) he will appear at such time and place as the court may direct;

(c) he will not depart from this state without leave of the court".

46-9-502. Conditions performed — bail discharged. When the conditions of bail have been performed and the accused has been discharged from his obligations in the cause, the court shall return to him or his sureties the deposit of any cash, stocks, or bonds. If the bail is real estate, the court shall notify in writing the county clerk and recorder and the lien of the bail bond on the real estate shall be discharged. If the bail is a written undertaking or a commercial surety bond, it shall be discharged and the sureties exonerated.

History: En. 95-1116 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; R.C.M. 1947, 95-1116(a).

46-9-503. Conditions not performed — forfeiture. (1) If the accused does not comply with the conditions of the bail bond, the court having jurisdiction shall enter an order declaring the bail to be forfeited.

(2) If such forfeiture is declared by a district court, notice of such order of forfeiture shall be mailed forthwith by the clerk of the court to the accused and his sureties at their last known address.

(3) If at any time within 30 days after the forfeiture the defendant or his bail appear and satisfactorily excuse his negligence or failure to comply with the conditions of the bail, the court, in its discretion, may direct the forfeiture of the bail to be discharged upon such terms as may be just.

(4) If such forfeiture is declared by a district court and if the forfeiture is not discharged as provided in this section, the court shall enter judgment for the state against the accused and his sureties for the amount of the bail and costs of the proceedings.

History: En. 95-1116 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; R.C.M. 1947, 95-1116(b), (c).

Cross-References

Disposition of bail forfeited for traffic offenses, 20-7-505.

46-9-504. Procedure on forfeiture — restitution. (1) Unless restitution is ordered as provided for in subsection (2), the court having jurisdiction shall proceed with the disposition of forfeited bail as follows:

(a) If judgment be rendered or the forfeiture not discharged and the defendant has deposited money as bail, the court with whom it is deposited must, immediately after receiving notice of said judgment or order of forfeiture, pay over the money deposited to the treasury of the city or county wherein the bail was taken.

(b) When judgment is entered in favor of the state or the order of forfeiture is not discharged on any bail, execution may be issued forthwith for levy on stocks or bonds deposited with the court or upon the real estate described in the bail schedule. Such stocks, bonds, and real estate shall be sold in the same manner as in execution sales in civil actions. The proceeds of such sale shall be used to satisfy all court costs and prior encumbrances, if any, and from the balance a sufficient sum to satisfy the judgment or forfeiture shall be paid into the treasury of the city or county wherein the bail bond was taken. The balance shall be returned to the owner. The real estate so sold may be redeemed in the same manner as real estate may be redeemed after execution sales in civil actions.

(c) When judgment is entered in favor of the state and against the sureties or the surety company or when the forfeiture has not been discharged, execution may be issued against the sureties or the surety company in the same manner as executions in civil actions.

(2) If the court enters a judgment declaring bail to be forfeited or if the order of forfeiture is not discharged, the court having jurisdiction may order the bail forfeited to be paid as restitution to any victim of the offense for which the court has received bail. Whenever the court believes that restitution may be proper, the court shall order a hearing for the purpose of considering the nature and extent of the victim's pecuniary loss as defined in 46-18-243. If the court finds that restitution is appropriate, the court shall order restitution in an amount not exceeding the amount of the victim's complaint or the amount of the victim's pecuniary loss. An order to require restitution is a judgment against the defendant and his sureties, and the court may order the restitution to be made by payment of money deposited as bail. Any balance of the bail money must be disposed of in the same manner as provided in subsection (1). Provided no such determination or decision under this subsection shall be admissible as evidence in any other civil action, nor shall it be res judicata in any other civil action.

History: En. 95-1117 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1117; amd. Sec. 1, Ch. 132, L. 1985.

Compiler's Comments

1985 Amendment: Inserted introductory clause in (1); inserted (2).

Cross-References

Execution, Title 25, ch. 13 and 14.

Execution sale, Title 25, ch. 13, part 7.

Redemption of real property after execution sale, Title 25, ch. 13, part 8.

46-9-505. Issuance of arrest warrant — redetermining bail. (1) Upon failure to comply with any condition of a bail or recognizance, the court having jurisdiction at the time of such failure may, in addition to any other action provided by law, issue a warrant for the arrest of the person at liberty on bail or on his own recognizance.

(2) On verified application by the state setting forth facts or circumstances constituting a breach or threatened breach of any of the conditions

of the bail or a threat or an attempt to influence the pending proceeding, the court may issue a warrant for the arrest of the defendant.

(3) Upon the arrest, the defendant shall be brought before the court without unnecessary delay and the court shall conduct a hearing and determine bail in accordance with 46-9-311.

History: En. 95-1107 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1107.

CHAPTER 10

PRELIMINARY EXAMINATION

Part 1 — General Provisions

Section

46-10-101. Definition of preliminary examination.
46-10-102. Waiver of preliminary examination.

Part 2 — Procedure at Preliminary Examination

46-10-201. When examination not public.
46-10-202. Presentation of evidence.
46-10-203. Disposition of defendant.
46-10-204. Record of examination.

Part 1

General Provisions

46-10-101. Definition of preliminary examination. A "preliminary examination" is a hearing before a justice of the peace for the purpose of determining if there is probable cause to believe a felony has been committed by the defendant.

History: En. 95-1201 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1201.

Cross-References

Prosecution of criminal offenses, Art. II, sec. 20, Mont. Const.

Justices' Courts — examining courts in cases of felonies, Art. VII, sec. 5, Mont. Const.

Justices' Courts' jurisdiction — preliminary hearings, 3-10-303, 46-7-103.

46-10-102. Waiver of preliminary examination. If the defendant waives the preliminary examination, the justice shall hold him to answer to the court having jurisdiction of the offense.

History: En. 95-1202 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1202(b); amd. Sec. 9, Ch. 116, L. 1979.

Part 2

Procedure at Preliminary Examination

46-10-201. When examination not public. The justice may, in his discretion, and must upon the request of the defendant exclude from the preliminary examination every person not officially associated with the case before the court.

History: En. 95-1202 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1202(c); amd. Sec. 10, Ch. 116, L. 1979.

46-10-202. Presentation of evidence. (1) The defendant may not enter a plea. The justice shall hear the evidence without unnecessary delay. All witnesses must be examined in the presence of the defendant. The defendant may cross-examine witnesses against him and may introduce evidence in his own behalf.

(2) During the examination of any witness or when the defendant is making a statement or testifying, the justice may, and on the request of the defendant or state shall, exclude all other witnesses. He may also cause the witnesses to be kept separate and to be prevented from communicating with each other until all are examined.

History: En. Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1202(part), 95-1203; amd. Sec. 11, Ch. 116, L. 1979.

46-10-203. Disposition of defendant. If from the evidence it appears that there is probable cause to believe that an offense has been committed by the defendant, the justice shall hold him to answer to the court having jurisdiction of the offense; otherwise, the justice shall discharge him.

History: En. 95-1202 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1202(part); amd. Sec. 12, Ch. 116, L. 1979.

46-10-204. Record of examination. (1) The testimony of each witness, in cases of homicide, must be reduced to writing as a deposition by a court-appointed stenographer. In cases other than homicide, the testimony of each witness must be taken by a court-appointed stenographer upon demand by the county attorney, the defendant, or the defendant's counsel.

(2) After concluding the proceeding, if the justice holds the defendant to answer, he shall transmit immediately to the clerk of the court having jurisdiction of the offense all papers in the proceeding and any bail taken by him.

History: En. 95-1202 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1202(d); amd. Sec. 13, Ch. 116, L. 1979.

CHAPTER 11

COMMENCEMENT OF PROSECUTION

Part 1 — Methods of Commencing Prosecution

Section

46-11-101. Methods of commencing prosecution.
46-11-102. When given methods required.

Part 2 — Filing of Information

46-11-201. Leave to file information.
46-11-202. Leave to file information — when defendant is district judge.
46-11-203. Time for filing information.
46-11-204. Procedure when county attorney decides not to file.

Part 3 — Grand Jury

46-11-301. Summoning grand juries — composition.
46-11-302. Objections to grand jury and to grand jurors.
46-11-303. Foreman — powers and duties.
46-11-304 through 46-11-310 reserved.
46-11-311. Charge by court.

46-11-312. Powers and duties of grand jury.
46-11-313. Subpoena of witnesses.
46-11-314. Reception of evidence.
46-11-315. Advice and assistance to grand jury — who may be present.
46-11-316. Stenographer — transcript of testimony.
46-11-317. Secrecy of proceedings and disclosure.
46-11-318. Discharging jury.
46-11-319. Expenses of grand jury.
46-11-320 through 46-11-330 reserved.
46-11-331. Finding an indictment.
46-11-332. Presenting the indictment.
46-11-333. Procedure regarding defendant.

Part 4 — The Charge

46-11-401. Form of charge.
46-11-402. Record of charge — certified copy.
46-11-403. Amending the information.
46-11-404. Joinder and severance of offenses and defendants.
46-11-405. Discharge of codefendant.

Part 5 — Effect of Multiple Charges and Former Prosecutions

46-11-501. Definitions.
46-11-502. Prosecution when conduct constitutes more than one offense.
46-11-503. When prosecution based on same transaction barred by former prosecution.
46-11-504. Former prosecution in another jurisdiction — when a bar.
46-11-505. When former prosecution not a bar.

Part 6 — Ensuring Availability of Material Witness Preserving Testimony

46-11-601. Recognizance by or deposition of witness.

Chapter Cross-References

Initiation of criminal proceedings — grand jury, Art. II, sec. 20, Mont. Const.

Repeal of law creating criminal offenses — when bar to prosecution, 1-2-205.

Attorney General or County Attorney to prosecute — Legislative Audit Act, 5-13-310.

Power of Commissioner of Political Practices, Title 13, ch. 37, part 1.

Duty of County Attorney — election law violations, 13-37-124, 13-37-125.

Duty of public officer to make complaint — gambling, 23-5-124.

Immunity from misdemeanor prosecution — suit for injunction, 30-14-222.

County Attorney to prosecute violations of pharmacist regulations, 37-7-203.

Prosecution — unemployment compensation, 39-51-309.

Statute of Limitations, 45-1-205, 45-1-206.

Commencing prosecution — official misconduct, 45-7-401.

Immunity for witness — Montana Consumer Product Safety Act of 1975, 50-30-108.

Notice before prosecution — Montana Consumer Product Safety Act of 1975, 50-30-302, 50-30-303.

Notice and chance to present views before criminal prosecution — Montana Food, Drug, and Cosmetic Act, 50-31-504, 50-31-505.

Part 1

Methods of Commencing Prosecution

46-11-101. Methods of commencing prosecution. When authorized by law, a prosecution may be commenced by:

(1) a complaint;

(2) an information following a preliminary examination or waiver thereof;

(3) an information after leave of court has been granted;

(4) an indictment upon a finding by a grand jury.

History: En. 95-1501 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1501.

Cross-References

General time limitations — prosecution is commenced when an indictment is found or an information or complaint is filed, 45-1-205.

46-11-102. When given methods required. (1) All prosecutions of offenses triable in the district courts shall be by indictment or information.

(2) All other prosecutions of offenses may be by complaint.

History: En. 95-1502 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 18, Ch. 184, L. 1977; R.C.M. 1947, 95-1502.

Part 2

Filing of Information

46-11-201. Leave to file information. (1) The county attorney may apply directly to the district court for permission to file an information against a named defendant. The application must be by affidavit supported by such evidence as the judge may require. If it appears that there is probable cause to believe that an offense has been committed by the defendant, the judge shall grant leave to file the information, otherwise the application shall be denied.

(2) When there has been granted leave to file an information against the defendant, a warrant may issue for his arrest and he must be brought before the court unless the court orders otherwise.

History: En. 95-1301 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1301(a), (b).

Cross-References

Prosecution of criminal offenses, Art. II, sec. 20, Mont. Const.

46-11-202. Leave to file information — when defendant is district judge. (1) If the person against whom an information is sought to be filed is a district court judge, the county attorney shall apply directly to the supreme court for permission to file the information. The supreme court shall then proceed in the manner provided in 46-11-201(1).

(2) When leave is granted by the supreme court, it shall designate and direct a judge of the district court of another district to preside at the trial of such information and hear and determine all pleas and motions affecting the defendant thereunder before and after judgment. All necessary records shall be transferred to the clerk of the district court of the district in which the action arose.

History: En. 95-1301 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1301(c).

46-11-203. Time for filing information. After the defendant has been examined and held to answer or has waived preliminary examination as provided in chapter 10 or after leave of court has been granted as provided in 46-11-201 and 46-11-202, the county attorney must file within 30 days in the proper district court an information charging the defendant with the offense for which he is held to answer or any other offense disclosed by the evidence.

If the county attorney fails to file the information within the time specified, he may be found guilty of contempt and may be prosecuted for neglect of duty.

History: **En. 95-1302 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1302.**

46-11-204. Procedure when county attorney decides not to file. If the county attorney determines an information ought not to be filed after the defendant has been held to answer following a preliminary examination or waiver thereof or after leave to file has been granted, he must within 30 days make, subscribe, and file with the clerk of the court a statement in writing containing his reasons in fact and in law for not filing an information. The court must examine such statements together with the evidence filed in the case, and if upon such examination the court is not satisfied with the statement, the county attorney shall be directed and required by the court to file the proper information and bring the case to trial.

History: **En. 95-1303 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1303.**

Part 3

Grand Jury

Part Cross-References

Prosecution of criminal offenses, Art. II, sec. 20, Mont. Const.

Grand jury defined, 3-15-103.

Grand jury — composition, summoning, impaneling, Title 3, ch. 15, part 6.

46-11-301. Summoning grand juries — composition. (1) A grand jury must only be drawn and summoned when the district judge, in his discretion, considers a grand jury necessary and shall so order. The composition and drawing of a grand jury shall be in accordance with the provisions of Title 3, chapter 15, part 6.

(2) The district judge may direct the selection of one or more alternate jurors, who shall sit as regular jurors before an indictment is found or a grand jury investigation is concluded. If a member of the jury becomes unable to perform his duty, he may be replaced by an alternate.

History: **En. 95-1401 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 3, L. 1973; R.C.M. 1947, 95-1401(part).**

46-11-302. Objections to grand jury and to grand jurors. (1) The state may challenge the panel of a grand jury on the grounds that the grand jury was not selected, drawn, or summoned according to law and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges may be oral or in writing and shall be tried and decided by the court. At any time for cause shown the court may excuse or discharge a juror or jurors either temporarily or permanently, and in the latter event, the court may impanel another person or persons in place of the juror or jurors discharged.

(2) A motion to dismiss the indictment may be based on the grounds that the grand jury was not selected, drawn, or summoned according to law or that an individual juror was not legally qualified. An indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to 46-11-303 that

eight or more jurors, after deducting those not legally qualified, concurred in finding the indictment.

History: En. 95-1402 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 2, Ch. 3, L. 1973; R.C.M. 1947, 95-1402.

46-11-303. Foreman — powers and duties. The court shall appoint one of the jurors to be foreman. The foreman shall have the power to administer oaths and affirmations and shall sign all indictments. He or another juror designated by him shall keep a record of the number of jurors concurring in the finding of every indictment and shall file the record with the clerk of court, but the record shall not be made public except on order of the court.

History: En. 95-1403 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1403.

46-11-304 through 46-11-310 reserved.

46-11-311. Charge by court. When the grand jury is impaneled and sworn, it shall be charged by the judge who summoned it. In doing so, the court shall give the grand jurors such information as it deems proper or as is required by law as to their duties and as to any charges of public offenses known to the court and likely to come before the grand jury.

History: En. 95-1404 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1404(a).

46-11-312. Powers and duties of grand jury. (1) When the grand jury has been impaneled, sworn, and charged, it shall retire to a private room and inquire into the offenses cognizable by it. The grand jury may inquire into all public offenses committed or triable within the county and present them to the court by indictment.

(2) If a member of a grand jury knows or has reason to believe that a public offense triable within the county has been committed, he shall declare it to his fellow jurors, who shall thereupon investigate it.

(3) The grand jury may inquire into:

(a) the case of every person imprisoned in the jail of the county on a criminal charge and not indicted or against whom an information or complaint has not been filed;

(b) the condition and management of the public prisons within the county;

(c) the willful or corrupt misconduct in office of public officers of every description within the county.

(4) The grand jury is entitled to free access at all reasonable times to the public prisons and to the examination without charge of all public records within the county.

(5) If in the judgment of the grand jury the services of an expert are necessary, the grand jury may employ one or more at an agreed compensation to be first approved by the court. If in the judgment of the grand jury the services of assistants to such experts are required, the grand jury may employ such assistants at a compensation to be agreed upon and approved by the court.

History: En. Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1404(part), 95-1405(a) thru (e).

46-11-313. Subpoena of witnesses. A subpoena requiring the attendance of a witness before the grand jury may be signed and issued by the county attorney, by the foreman of the grand jury, or by the judge of the district court. The subpoena may be directed to witnesses in the state in support of the prosecution, those witnesses whose testimony, in the opinion of the issuer, is material in an investigation before the grand jury, and such other witnesses as the grand jury may direct.

History: En. 95-1407 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 16, Ch. 184, L. 1977; R.C.M. 1947, 95-1407.

46-11-314. Reception of evidence. (1) In the investigation of a charge, the grand jury shall receive no other evidence than that given by witnesses produced and sworn before it or furnished by legal documentary evidence or the deposition of a witness in the cases mentioned in chapter 15, part 2, of this title.

(2) The grand jury is not required to hear evidence for the defendant, but it shall weigh all the evidence submitted to it. If it has reason to believe other evidence within its reach will explain away the charge, it shall order the evidence to be produced and for that purpose may require the county attorney to issue process for witnesses.

History: En. 95-1408 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 17, Ch. 184, L. 1977; R.C.M. 1947, 95-1408(1), (2).

46-11-315. Advice and assistance to grand jury — who may be present. (1) The grand jury may at all times ask the advice of the court or the judge thereof, the attorney general, or the county attorney. Unless such advice is asked, the judge of the court shall not be present during the sessions of the grand jury.

(2) The county attorney or the attorney general may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable by the grand jury and may interrogate witnesses before the grand jury whenever he thinks it necessary. When a charge against or involving the county attorney, deputy county attorney, or anyone employed by or connected with the office of the county attorney is being investigated by the grand jury, the county attorney, deputy county attorney, or all or any one or more of them shall not be allowed to be present in an official capacity before the grand jury when the charge is being investigated. They or he shall only be present while a witness and after appearing as a witness shall leave the place where the grand jury is holding session.

(3) When requested to do so by the grand jury of any county, the attorney general or county attorney may employ special counsel and investigators who shall investigate and present the evidence acquired in such investigation to the grand jury.

(4) The grand jury or county attorney may require by subpoena the attendance of any person before the grand jury as interpreter. While his services are necessary, the interpreter may be present at the examination of witnesses before the grand jury. The compensation for the services of the interpreter constitutes a charge against the county and shall be fixed by the grand jury in an amount to be approved by the court. It shall be paid out of the county treasury on a warrant of the county auditor upon an order of the judge of the district court.

History: En. 95-1406 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 15, Ch. 184, L. 1977; R.C.M. 1947, 95-1406(1) thru (4).

46-11-316. Stenographer — transcript of testimony. (1) The grand jury may appoint a stenographer to take in shorthand the testimony of witnesses, or the testimony may be taken by a recording device, but the record so made shall include the testimony of all witnesses on that particular investigation. The shorthand notes or the recordings and transcript of the same, if any, shall be delivered to and retained by the clerk of the district court.

(2) The stenographer and any typist who transcribes the stenographer's notes or recordings shall be sworn by the foreman not to disclose any testimony or the names of any witnesses except when so ordered by the court.

(3) The stenographic reporter shall certify and file with the clerk of the district court an original transcription of his shorthand notes and a copy thereof and as many additional copies as there are defendants. The reporter shall complete the certification and filing within 10 days after the indictment has been found unless the court for good cause makes an order extending the time. The clerk of the district court shall deliver the original of the transcript filed with him to the county attorney immediately upon his receipt thereof, retain one copy for use only by judges in proceedings relating to the indictment, and deliver a copy of the transcript to each defendant or his attorney.

History: En. 95-1406 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 15, Ch. 184, L. 1977; R.C.M. 1947, 95-1406(5).

46-11-317. Secrecy of proceedings and disclosure. (1) Disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror may be made to the county attorney for use in the performance of his duty. Otherwise a juror, attorney, interpreter, stenographer, or operator of a recording device or any typist who transcribes recorded testimony may disclose matters occurring before the grand jury only when so directed by the court preliminary to or in connection with a judicial proceeding or when permitted by the court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury under 46-11-302(2). No obligation of secrecy may be imposed upon any person except in accordance with this rule.

(2) The court may direct that an indictment shall be kept secret until the defendant is in custody or has given bail, and no person shall disclose the finding of the indictment except when necessary for the issuance and execution of a warrant or summons.

History: En. 95-1409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1409.

46-11-318. Discharging jury. When the grand jury certifies completion of business before it and the court concurs, it shall be discharged by the court.

History: En. 95-1404 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1404(part).

46-11-319. Expenses of grand jury. (1) All expenses of the grand jury, including special counsel and investigators, if any, shall be paid by the treasurer of the county out of the general fund of the county, except as provided in subsection (2), upon warrants drawn by the county auditor or the clerk of the district court upon the written order of the judge of the district court of the county.

(2) If a county has a district court fund, all expenses of a grand jury must be paid out of such fund.

(3) Subject to the procedures established under 3-5-902(1), the state shall reimburse the county for juror and witness fees as provided in 3-5-903 and for witness expenses as provided in 46-15-104. The county shall deposit the amount reimbursed in its general fund unless the county has a district court fund. If the county has a district court fund, the amount reimbursed must be deposited in such fund.

History: En. 95-1405 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1405(f); amd. Sec. 4, Ch. 66, L. 1985; amd. Sec. 12, Ch. 680, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 66 near middle of (1), inserted exception clause; and inserted (2). Chapter 680 inserted (3).

46-11-320 through 46-11-330 reserved.

46-11-331. Finding an indictment. (1) The grand jury shall find an indictment when all the evidence before it taken together, if unexplained or uncontradicted, would in its judgment warrant a conviction by a trial jury.

(2) An indictment cannot be found without the concurrence of at least eight grand jurors. When so found, it must be endorsed, "a true bill", and the endorsement must be signed by the foreman of the grand jury.

History: (1)En. 95-1408 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 17, Ch. 184, L. 1977; Sec. 95-1408, R.C.M. 1947; (2)En. 95-1410 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 3, L. 1973; Sec. 95-1410, R.C.M. 1947; R.C.M. 1947, 95-1408(3), 95-1410(a).

46-11-332. Presenting the indictment. (1) An indictment, when found by the grand jury, must be presented by their foreman in their presence to the court and must be filed with the clerk.

(2) When an indictment is filed against a district court judge, it must be transmitted directly to the supreme court, which shall thereupon designate and direct a judge of the district court of another district to preside at the trial of such indictment and hear and determine all pleas and motions affecting the defendant thereunder before and after judgment.

History: En. 95-1410 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 3, L. 1973; R.C.M. 1947, 95-1410(b).

46-11-333. Procedure regarding defendant. (1) When an indictment is found against a defendant, a warrant must issue for his arrest and he must be brought before the court unless the court orders otherwise.

(2) If the defendant is in custody or has given bail and eight jurors do not concur in finding an indictment, the foreman shall so report to the court in writing forthwith.

History: En. 95-1410 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 3, L. 1973; R.C.M. 1947, 95-1410(c), (d).

Part 4

The Charge

Part Cross-References

Joinder of charges — conspiracy, 45-4-102.

Alternate charges — attempt, 45-4-103.

46-11-401. Form of charge. (1) A charge shall:

(a) be in writing and in the name of the state of Montana or in the name of a municipality if a violation of a municipal ordinance is charged;

(b) specify the name of the court in which the charge is filed; and

(c) charge the commission of an offense by:

(i) stating the name of the offense;

(ii) citing in customary form the statute, rule, or other provision of law which the defendant is alleged to have violated;

(iii) stating the facts constituting the offense in ordinary and concise language and in such manner as to enable a person of common understanding to know what is intended;

(iv) stating the time and place of the offense as definitely as can be done; and

(v) stating the name of the accused, if known, and, if not known, designating the accused by any name or description by which he can be identified with reasonable certainty.

(2) If the charge is by information or indictment, it shall include endorsed thereon the names of the witnesses for the state, if known.

(3) If the charge is by complaint, it shall be signed on oath by a person having knowledge of the facts or by the county attorney; if by information, it shall be signed by the county attorney or by his deputy; if by indictment, it shall be signed by the foreman of the grand jury.

History: En. 95-1503 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1503(a) thru (e).

46-11-402. Record of charge — certified copy. If the charge is by information or indictment, it must be recorded by the clerk within 5 days after the same is filed in a book to be kept for that purpose. The judge must compare the record with the original indictment or information and certify the correctness thereof. In case the original is lost or destroyed, the defendant may be tried upon a copy taken from the record and certified by the clerk.

History: En. 95-1503 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1503(f).

46-11-403. Amending the information. (1) (a) An information may be amended in matters of substance at any time not less than 5 days before trial with leave of court.

(b) When the prosecution seeks leave to amend an information as to a matter of substance, the prosecuting attorney shall file:

(i) a motion for leave to amend stating the nature of the proposed amendment;

(ii) a copy of the proposed amended information; and

(iii) an affidavit in compliance with 46-11-201(1), stating facts sufficient to show the existence of probable cause to support the charge as amended.

(c) If the motion is timely and the amended information is supported by probable cause, the court shall grant leave to amend.

(d) The defendant shall be arraigned on the amended information without unreasonable delay.

(e) The defendant shall have a reasonable period of time to prepare for trial on the amended information.

(2) The court may permit an information to be amended as to form at any time before verdict or finding if no additional or different offense is charged and if the substantial rights of the defendant are not prejudiced.

(3) No charge may be dismissed because of a formal defect which does not tend to prejudice a substantial right of the defendant.

History: **En. 95-1505 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 431, L. 1977; R.C.M. 1947, 95-1505; amd. Sec. 1, Ch. 62, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "information" for "charge"; deleted "once" following "amended" in first sentence; substituted "with leave" for "without leave" in (1)(a); added subsections (1)(b) through (1)(e).

46-11-404. Joinder and severance of offenses and defendants. (1) An indictment, information, or complaint may charge two or more different offenses connected together in their commission, different statements of the same offense, or two or more different offenses of the same class under separate counts. If two or more indictments, informations, or complaints are filed in such cases in the same court, the court may order them to be consolidated. Allegations made in one count may be incorporated by reference in another count. The prosecution is not required to elect between the different offenses or counts set forth in the indictment, information, or complaint, and the defendant may be convicted of any number of the offenses charged. Each offense of which the defendant is convicted must be stated in the verdict or the finding of the court.

(2) The court in which the case is triable, in the interests of justice and for good cause shown, may, in its discretion, order that the different offenses or counts set forth in the indictment, information, or complaint be tried separately or divided into two or more groups and each of the groups tried separately. An acquittal of one or more counts shall not be considered an acquittal of any other count.

(3) Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately, and all of the defendants need not be charged in each count.

(4) If it appears that a defendant or the state is prejudiced by a joinder of related prosecutions or defendants in a single charge or by joinder of separate charges or defendants for trial, the court may order separate trials, grant a severance of defendants, or provide any other relief as justice may require.

History: **En. 95-1504 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 19, Ch. 184, L. 1977; R.C.M. 1947, 95-1504(1) thru (4).**

46-11-405. Discharge of codefendant. (1) When two or more persons are included in the same charge, the court may, at any time before the defendants have gone into their defense, on the application of the county attorney, direct any defendant to be discharged so that he may be a witness for the state.

(2) When two or more persons are included in the same indictment or information and the court is of the opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, the court must order him to be discharged before the evidence is closed that he may be a witness for his codefendant.

History: **En. Sec. 187, p. 245, Bannack Stat.; re-en. Sec. 308, p. 237, Cod. Stat. 1871; re-en. Sec. 308, 3d Div. Rev. Stat. 1879; re-en. Sec. 309, 3d Div. Comp. Stat. 1887; amd. Secs. 2075,**

2076, Pen. C. 1895; re-en. Secs. 9276, 9277, Rev. C. 1907; re-en. Secs. 11974, 11975, R.C.M. 1921; Cal. Pen. C. Secs. 1099, 1100; re-en. Secs. 11974, 11975, R.C.M. 1935; Secs. 94-7206, 94-7207, R.C.M. 1947; redes. 95-1504(d) and (e) by Sec. 29, Ch. 513, L. 1973; amd. Sec. 19, Ch. 184, L. 1977; R.C.M. 1947, 95-1504(5), (6).

Part 5

Effect of Multiple Charges and Former Prosecutions

Part Cross-References

Rights of accused — double jeopardy, Art. II, sec. 25, Mont. Const.

46-11-501. Definitions. (1) The term "same transaction" includes conduct consisting of:

(a) a series of acts or omissions which are motivated by a purpose to accomplish a criminal objective and which are necessary or incidental to the accomplishment of that objective; or

(b) a series of acts or omissions which are motivated by a common purpose or plan and which result in the repeated commission of the same offense or affect the same person or persons or the property thereof.

(2) An offense is an "included offense" when:

(a) it is established by proof of the same or less than all the facts required to establish the commission of the offense charged;

(b) it consists of an attempt to commit the offense charged or to commit an offense otherwise included therein; or

(c) it differs from the offense charged only in the respect that a less serious injury or risk of injury to the same person, property, or public interest or a lesser kind of culpability suffices to establish its commission.

History: En. 95-1711 by Sec. 6, Ch. 513, L. 1973; amd. Sec. 25, Ch. 184, L. 1977; R.C.M. 1947, 95-1711(1).

46-11-502. Prosecution when conduct constitutes more than one offense. When the same transaction may establish the commission of more than one offense, a person charged with such conduct may be prosecuted for each such offense. He may not, however, be convicted of more than one offense if:

(1) one offense is included in the other;

(2) one offense consists only of a conspiracy or other form of preparation to commit the other;

(3) inconsistent findings of fact are required to establish the commission of the offenses;

(4) the offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct; or

(5) the offense is defined to prohibit a continuing course of conduct and the defendant's course of conduct was interrupted, unless the law provides that the specific periods of such conduct constitute separate offenses.

History: En. 95-1711 by Sec. 6, Ch. 513, L. 1973; amd. Sec. 25, Ch. 184, L. 1977; R.C.M. 1947, 95-1711(2).

46-11-503. When prosecution based on same transaction barred by former prosecution. If the offenses were known to the attorney prosecuting upon sufficient evidence to justify the filing of an information or the issuance of a warrant of arrest and were consummated prior to the original charge and if the jurisdiction and venue of the several offenses lie in a single court, a prosecution based upon the same transaction as a former prosecution is barred by such former prosecution under the following circumstances:

(1) The former prosecution resulted in an acquittal. There is an acquittal whenever the prosecution results in a finding of not guilty by the trier of fact or in a determination that there is insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense than the offense charged which is subsequently set aside is an acquittal of the greater inclusive offense that was charged.

(2) The former prosecution was terminated, after a complaint had been filed on a misdemeanor charge or after an information had been filed or an indictment found on a felony charge, by a final order of judgment for the defendant which has not been set aside, reversed, or vacated and which necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the offense.

(3) The former prosecution resulted in a conviction. There has been a conviction whenever the prosecution resulted in:

(a) a judgment of conviction which has not been reversed or vacated;

(b) a verdict of guilty which has not been set aside and which is capable of supporting a judgment, so long as failure to enter judgment was for a reason other than a motion of the defendant; or

(c) a plea of guilty accepted by the court, so long as failure to enter judgment was for a reason other than a motion of the defendant.

(4) The former prosecution was improperly terminated. Except as provided in this subsection (4), there is an improper termination of a prosecution whenever the termination is for reasons not amounting to an acquittal and takes place after the first witness is sworn but before verdict. Termination under either of the following circumstances is not improper:

(a) The defendant consents to the termination or waives his right to object to the termination.

(b) The trial court, in the exercise of its discretion, finds that the termination is necessary because:

(i) it is physically impossible to proceed with the trial in conformity with law;

(ii) there is a legal defect in the proceedings which would make any judgment entered upon a verdict reversible as a matter of law;

(iii) prejudicial conduct in or outside the courtroom makes it impossible to proceed with the trial without manifest injustice to either the defendant or the state;

(iv) the jury is unable to agree upon a verdict; or

(v) false statements of a juror on voir dire prevent a fair trial.

History: En. 95-1711 by Sec. 6, Ch. 513, L. 1973; amd. Sec. 25, Ch. 184, L. 1977; R.C.M. 1947, 95-1711(3).

46-11-504. Former prosecution in another jurisdiction — when a bar. When conduct constitutes an offense within the concurrent jurisdiction of this state and of the United States or another state or of two courts of separate, overlapping, or concurrent jurisdiction in this state, a prosecution in any such other jurisdiction is a bar to a subsequent prosecution in this state under the following circumstances:

(1) The first prosecution resulted in an acquittal or in a conviction as defined in 46-11-503 and the subsequent prosecution is based on an offense arising out of the same transaction.

(2) The former prosecution was terminated, after the complaint had been filed on a misdemeanor charge or after the information had been filed or the indictment found on a felony charge, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed, or vacated; and the acquittal, final order, or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the offense for which the defendant is subsequently prosecuted.

History: En. 95-1711 by Sec. 6, Ch. 513, L. 1973; amd. Sec. 25, Ch. 184, L. 1977; R.C.M. 1947, 95-1711(4).

46-11-505. When former prosecution not a bar. A prosecution is not a bar within the meaning of 46-11-503 and 46-11-504 under any one or more of the following circumstances:

(1) The former prosecution was before a court which lacked jurisdiction over the defendant or the offense.

(2) The former prosecution was procured by the defendant without the knowledge of the proper prosecuting officer or with the purpose of avoiding the sentence which might otherwise be imposed.

(3) The former prosecution resulted in a judgment of conviction which was held invalid in a postconviction hearing.

History: En. 95-1711 by Sec. 6, Ch. 513, L. 1973; amd. Sec. 25, Ch. 184, L. 1977; R.C.M. 1947, 95-1711(5).

Part 6

Ensuring Availability of Material Witness Preserving Testimony

Part Cross-References

Detention of witnesses in criminal proceedings, Art. II, sec. 23, Mont. Const.

46-11-601. Recognizance by or deposition of witness. (1) If the defendant is held to answer after a preliminary examination or after the defendant has waived a preliminary examination or after the district court has granted leave to file an information or after an indictment has been returned, the judge may:

(a) require any material witness for the state or defendant to enter into a written undertaking to appear at the trial; and

(b) provide for the forfeiture of a sum certain in the event the witness does not appear at the trial.

(2) Any witness who refuses to enter into a written undertaking may be remanded to custody but shall not be held longer than is necessary to take his deposition. After the deposition is taken, the witness must be immediately discharged.

(3) Such deposition must be taken in the presence of the county attorney and the defendant and his counsel unless either the county attorney or the defendant and his counsel fail to attend after reasonable notice of the time and place set for taking the deposition.

History: En. 95-1204 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1204.

Cross-References

Depositions in criminal proceedings, Art. II, sec. 23, Mont. Const.

Clerk of District Court to keep witness book, 3-5-510.

Procedure in reference to witnesses' certificates, 3-5-511.

Witness from another state summoned to testify in this state, 46-15-113.

When depositions taken, 46-15-201.

Procedure for taking depositions, 46-15-202.

CHAPTER 12

ARRAIGNMENT OF DEFENDANT

Part 1 — General Provisions

Section
46-12-101. Arraignment defined.
46-12-102. Place of arraignment.
46-12-103. Presence of defendant.
46-12-104. Bringing defendant into court.
46-12-105. Joint defendants.

Part 2 — Procedure on Arraignment

46-12-201. General rules of procedure for arraignment.
46-12-202. Court to advise defendant of his rights and the charges.
46-12-203. Time allowed to answer.
46-12-204. The plea — plea bargains.
46-12-205. Record of arraignment.
46-12-206. Irregularity of arraignment.

Chapter Cross-References

Rights of accused, Art. II, sec. 24, Mont. Const.

Part 1

General Provisions

46-12-101. Arraignment defined. "Arraignment" is the formal act of calling the defendant into open court to answer the charge against him.

History: En. 95-1601 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1601.

46-12-102. Place of arraignment. The defendant shall be arraigned in the court in which the indictment, information, or complaint is filed unless before arraignment the cause has been removed to another court, in which case he shall be arraigned in that court.

History: En. 95-1602 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1602.

46-12-103. Presence of defendant. If the offense charged is a felony, the defendant must be personally present for arraignment. If the offense charged is a misdemeanor, he may appear by counsel.

History: En. 95-1603 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1603.

46-12-104. Bringing defendant into court. The court may direct any official who has custody of the defendant to bring him before the court to be arraigned.

History: En. 95-1604 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1604.

46-12-105. Joint defendants. Defendants who are jointly charged may be arraigned separately or together in the discretion of the court.

History: En. 95-1605 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1605.

Part 2

Procedure on Arraignment

46-12-201. General rules of procedure for arraignment. The arraignment in any court in this state must be conducted in the following manner:

(1) The arraignment must be in open court.

(2) The court must inquire of the defendant or his counsel the defendant's true name, and if the defendant's true name be given as any other than that used in the charge, the court must order the defendant's name to be substituted for the name under which he is charged. The subsequent proceedings must be conducted with the defendant charged under that name, but in the discretion of the court, the defendant may also be referred to by the name by which he was first charged.

(3) The court must determine whether the defendant is under any disability which would prevent the court in its discretion from proceeding with the arraignment. The arraignment may be continued until such time as the court determines the defendant is able to proceed.

History: En. 95-1606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1606(a), (b), (c).

46-12-202. Court to advise defendant of his rights and the charges. (1) The defendant shall be advised by the court as follows:

(a) of the nature of the crime charged against him;

(b) of the punishment as set forth by statute for the crime charged;

(c) if the defendant intends to enter into a plea bargain agreement:

(i) that under 46-12-204, the court is not bound by such agreements;

(ii) that under 46-12-204, if the court does not impose the sentence recommended by the prosecution pursuant to a plea agreement, the court is not required to allow the defendant to withdraw a plea of guilty;

(iii) that criminal sentencing is governed by Title 46, chapter 18; and

(iv) that the defendant and his counsel should carefully review Title 46, chapter 18, and consider the most severe sentence that can be imposed for a particular crime;

(d) if the defendant appears for arraignment without counsel, of his right to counsel and of his right to assigned counsel if he is unable to employ counsel. If counsel is or has been waived by the defendant, the court shall ascertain if the waiver is or was voluntary before proceeding.

(e) of the time prescribed by statute to enter a plea;

(f) of his right to secure bail to release him from custody.

(2) The court, or the clerk or county attorney under its direction, must:

(a) deliver to the defendant a true copy of the indictment, information, or complaint, including the endorsements thereon and the list of witnesses when required;

(b) read the indictment, information, or complaint to the defendant unless the defendant or his counsel waives such reading; and

(c) ask him whether he pleads guilty or not guilty to the indictment, information, or complaint.

History: En. 95-1606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1606(part); amd. Sec. 1, Ch. 606, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (1)(c).

Cross-References

Duty of court to advise at initial appearance, 46-7-102.

Court to advise defendant of rights — extradition proceedings, 46-30-217.

46-12-203. Time allowed to answer. If on the arraignment the defendant requires it, he must be allowed a reasonable time, not less than 1 day, to answer or otherwise plead to the indictment, information, or complaint. The answer may include appropriate pretrial motions.

History: En. 95-1607 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1607.

Cross-References

Defendant's right to reasonable time for preparation of trial after plea, 46-16-106.

46-12-204. The plea — plea bargains. (1) The defendant shall enter a plea of guilty or not guilty to the indictment, information, or complaint. If the defendant refuses to plead to the indictment, information, or complaint, a plea of not guilty must be entered.

(2) The court may refuse to accept a plea of guilty and shall not accept the plea of guilty without first determining that the plea is voluntary with an understanding of the charge.

(3) (a) A plea bargain agreement is an agreement between a defendant and a prosecutor that in exchange for a particular plea the prosecutor will recommend to the court a particular sentence. A judge may not participate in the making of, and is not bound by, a plea bargain agreement. If a judge does not impose a sentence recommended by a prosecutor pursuant to a plea bargain agreement, the judge is not required to allow the defendant to withdraw a plea of guilty.

(b) Before a judge accepts a plea of guilty, he must advise the defendant:

(i) of all the provisions of subsection (3)(a);

(ii) of the punishment as set forth by statute for the crime charged;

(iii) that prior to entering a plea of guilty, the defendant and his counsel should have carefully reviewed Title 46, chapter 18, and considered the most severe sentence that can be imposed for a particular crime; and

(iv) that the judge may impose any sentence allowed by law.

History: En. 95-1606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1606(part); amd. Sec. 2, Ch. 606, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (3).

46-12-205. Record of arraignment. The court must prepare and keep a written record of all arraignment proceedings. In district courts a verbatim record of all arraignment proceedings must be made, preserved, and filed with the court.

History: En. 95-1606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1606(f).

46-12-206. Irregularity of arraignment. No irregularity in the arraignment which does not affect the substantial rights of the defendant shall affect the validity of any proceeding in the cause if the defendant pleads to the charge or proceeds to trial without objecting to such irregularity.

History: **En. 95-1608 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1608.**

CHAPTER 13

PRETRIAL MOTIONS

Part 1 — General Provisions

Section
46-13-101. Defenses and objections which may be raised before trial.
46-13-102. Defenses and objections which must be raised before trial.
46-13-103. Time of making motion.
46-13-104. Time of hearing motion.
46-13-105. If motion disallowed, plea to be entered.
46-13-106. Effect of order of dismissal.

Part 2 — Specific Pretrial Motions

46-13-201. Dismissal at instance of court or prosecution.
46-13-202. Motion for continuance.
46-13-203. Change of place of trial.
46-13-204. Transfer of trial.

Part 3 — Suppression of Evidence

46-13-301. Motion to suppress confession or admission.
46-13-302. Motion to suppress evidence illegally seized.

Chapter Cross-References

Rights of accused and the state — change of venue, Art. II, sec. 24, Mont. Const.

Repeal of laws creating criminal offenses — when bar to prosecution, 1-2-205.

Immunity of defendant from criminal prosecution — civil suit for gambling losses, 23-5-134, 23-5-135.

Immunity from misdemeanor prosecution — suit for injunction, 30-14-222.

Defendant's immunity from criminal prosecution — Revised Uniform Reciprocal Enforcement of Support Act (1968), 40-5-122.

Part 1

General Provisions

46-13-101. Defenses and objections which may be raised before trial. Any defense or objection which is capable of determination without the trial of the general issue may be raised before trial by motion to dismiss or for other appropriate relief. The motion shall state with particularity the grounds therefor and the order or relief sought.

History: **En. 95-1701 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1701.**

46-13-102. Defenses and objections which must be raised before trial. Defenses and objections based on defects in the institution of the prosecution or in the complaint, indictment, or information other than that it fails to show jurisdiction in the court or to charge an offense may be raised only before trial by motion to dismiss or for other appropriate relief. The motion shall include all such defenses and objections then available to the defendant. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver. Lack of jurisdiction or the failure of the indictment, information, or complaint to charge an offense shall be noticed by the court at any time during the pendency of the proceeding.

History: En. 95-1702 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1702.

46-13-103. Time of making motion. The motion provided for in 46-13-101 and 46-13-102 shall be made before the plea is entered, but the court for cause may permit it to be made within a reasonable time thereafter.

History: En. 95-1704 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 22, Ch. 184, L. 1977; R.C.M. 1947, 95-1704.

46-13-104. Time of hearing motion. A motion before trial raising defenses or objections shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue.

History: En. 95-1705 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1705.

46-13-105. If motion disallowed, plea to be entered. If a motion is determined adversely to the defendant, he shall plead if he has not previously pleaded. A plea previously entered shall stand.

History: En. 95-1706 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 23, Ch. 184, L. 1977; R.C.M. 1947, 95-1706(1).

46-13-106. Effect of order of dismissal. If the court directs the action to be dismissed, the defendant must, if in custody, be discharged therefrom or, if admitted to bail, have his bail exonerated or money deposited instead of bail refunded to him. However, if the court grants a motion to dismiss based on a defect in the institution of the prosecution or in the indictment, information, or complaint or if it appears at any time before judgment that a mistake has been made in charging the proper offense, the court may also order that the defendant be held in custody or that his bail be continued for a specified time pending the filing of a new complaint, indictment, or information.

History: En. 95-1706 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 23, Ch. 184, L. 1977; R.C.M. 1947, 95-1706(2).

Part 2

Specific Pretrial Motions

46-13-201. Dismissal at instance of court or prosecution. (1) The court may, either on its own motion or upon the application of the attorney prosecuting and in furtherance of justice, order a complaint, information, or indictment to be dismissed; however, the court may not order a dismissal of a complaint, information, or indictment, or a count contained therein, charging a felony, unless good cause for dismissal is shown and the reasons for the dismissal are set forth in an order entered upon the minutes.

(2) The court, unless good cause to the contrary is shown, must order the prosecution to be dismissed if a defendant whose trial has not been postponed

upon his application is not brought to trial within 6 months after entry of plea upon a complaint, information, or indictment charging a misdemeanor.

(3) An order for the dismissal of an action as provided in this chapter is a bar to any other prosecution for the same offense if it is a misdemeanor, but it is not a bar if the offense is a felony.

History: En. 95-1703 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 173, L. 1971; R.C.M. 1947, 95-1703; amd. Sec. 3, Ch. 606, L. 1985.

Compiler's Comments

1985 Amendment: In (1), near beginning after "order", deleted "an action", after "dismissed", inserted "however, the court may not order a dismissal of a complaint, information, or indictment, or a count contained therein, charging a felony, unless good cause for dismissal is shown", and made minor wording changes in remainder of subsection.

46-13-202. Motion for continuance. (1) The defendant or the state may move for a continuance. If the motion is made more than 30 days after arraignment or at any time after trial has begun, the court may require that it be supported by affidavit.

(2) The court may upon the motion of either party or upon the court's own motion order a continuance if the interests of justice so require.

(3) All motions for continuance are addressed to the discretion of the trial court and shall be considered in the light of the diligence shown on the part of the movant. This section shall be construed to the end that criminal cases are tried with due diligence consonant with the rights of the defendant and the state to a speedy trial.

History: En. 95-1708 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1708.

46-13-203. Change of place of trial. (1) The defendant or the prosecution may move for a change of place of trial on the ground that there exists in the county in which the charge is pending such prejudice that a fair trial cannot be had in such county. The motion must be made at least 15 days prior to trial except that, if good cause is shown, it may be made thereafter.

(2) The motion must be in writing and supported by an affidavit which must state facts showing the nature of the prejudice alleged. The defendant or the state may file counteraffidavits. The court shall conduct a hearing and determine the merits of the motion.

(3) If the court determines that there exists in the county in which the prosecution is pending such prejudice that a fair trial cannot be had, it shall:

(a) transfer the cause to any other court of competent jurisdiction in any county in which a fair trial may be had;

(b) direct that a jury be selected in any county where a fair trial may be had and then returned to the county where the prosecution is pending to try the case; or

(c) take any other action designed to insure that a fair trial may be had.

History: En. 95-1710 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1710; amd. Sec. 14, Ch. 116, L. 1979; amd. Sec. 1, Ch. 556, L. 1981.

Compiler's Comments

1981 Amendment: Added subsections (3)(b) and (3)(c).

Cross-References

Rights of accused and the state — change of venue, Art. II, sec. 24, Mont. Const.

46-13-204. Transfer of trial. If the court determines that a motion to dismiss based upon the grounds of lack of jurisdiction or improper place of trial is well-founded, it may, instead of ordering dismissal, order the cause transferred to a court of competent jurisdiction or to a proper place of trial.

History: En. 95-1707 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 24, Ch. 184, L. 1977; R.C.M. 1947, 95-1707.

Part 3

Suppression of Evidence

46-13-301. Motion to suppress confession or admission. (1) A defendant may move to suppress as evidence any confession or admission given by him on the ground that it was not voluntary. The motion shall be in writing and state facts showing wherein the confession or admission was involuntary.

(2) The motion shall be made before the trial unless for good cause shown the court shall otherwise direct.

(3) The defendant shall give at least 10 days' notice of such motion to the attorney prosecuting or such other time as the court may direct. The defendant shall serve a copy of the notice and motion upon the attorney prosecuting.

(4) If the allegations of the motion state facts which, if true, show that the confession or admission was not voluntarily made, the court shall conduct a hearing into the merits of the motion. The prosecution must prove by a preponderance of the evidence that the confession or admission was voluntary.

(5) The issue of the admissibility of the confession or admission may not be submitted to the jury. If the confession or admission is determined to be admissible, the circumstances surrounding the making of the confession or admission may be submitted to the jury as bearing upon the credibility or the weight to be given to the confession or admission.

(6) If the motion is granted, the confession or admission is not admissible in evidence against the movant at the trial of the case.

History: En. 95-1805 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1805; amd. Sec. 1, Ch. 44, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "The prosecution must prove by a preponderance of the evidence that the confession or admission was voluntary" for "The burden of proving that a confession or admission was involuntary shall be on the defendant" in (4).

46-13-302. Motion to suppress evidence illegally seized. (1) A defendant aggrieved by an unlawful search and seizure may move the court to suppress as evidence anything so obtained. The motion shall be in writing and state facts showing wherein the search and seizure were unlawful.

(2) The motion shall be made before trial unless for good cause shown the court shall otherwise direct.

(3) The defendant shall give at least 10 days' notice of such motion to the attorney prosecuting or such other time as the court may direct. The defendant shall serve a copy of the notice and motion upon the attorney prosecuting.

(4) If the allegations of the motion state facts which if true show that the search and seizure were unlawful, the court shall conduct a hearing into the

merits of the motion. The burden of proving that the search and seizure were unlawful shall be on the defendant.

(5) If the motion is granted, the evidence shall not be admissible against the movant at any trial of the case.

History: **En. 95-1806 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1806.**

Cross-References

Unreasonable search and seizure prohibited, Art. II, sec. 11, Mont. Const.

CHAPTER 14

MENTAL COMPETENCY OF ACCUSED

Part 1 — Relevance of Mental Disease or Defect

Section
46-14-101. Mental disease or defect.
46-14-102. Evidence of mental disease or defect admissible to prove state of mind.
46-14-103. Mental disease or defect excluding fitness to proceed.

Part 2 — Procedure When Mental Disease or Defect an Issue

46-14-201. Requirement of notice — form of verdict and judgment.
46-14-202. Psychiatric examination of defendant.
46-14-203. Report of the examination.
46-14-204 through 46-14-210 reserved.
46-14-211. Repealed.
46-14-212. Examination by psychiatrist chosen by state or defendant.
46-14-213. Psychiatric testimony upon trial.
46-14-214 through 46-14-220 reserved.
46-14-221. Determination of fitness to proceed — effect of finding of unfitness — expenses.
46-14-222. Proceedings if fitness regained.

Part 3 — Disposition of Defendant

46-14-301. Commitment upon finding of not guilty by reason of lack of mental state — hearing to determine release or discharge.
46-14-302. Discharge or release upon motion of superintendent.
46-14-303. Application for discharge or release by committed person.
46-14-304. Recommitment after conditional release.
46-14-305 through 46-14-310 reserved.
46-14-311. Consideration of mental disease or defect in sentencing.
46-14-312. Sentence to be imposed.
46-14-313. Discharge of defendant from supervision.

Part 4 — Privileged Communications

46-14-401. Admissibility of statements made during examination or treatment.

Part 1

Relevance of Mental Disease or Defect

46-14-101. Mental disease or defect. As used in this chapter, the term "mental disease or defect" does not include an abnormality manifested only by repeated criminal or other antisocial conduct.

History: **En. 95-501 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 184, L. 1977; R.C.M. 1947, 95-501; amd. Sec. 1, Ch. 713, L. 1979.**

Cross-References

Voluntary act — material element of every offense, 45-2-202.

Criminal responsibility of person in intoxicated or drugged condition, 45-2-203.

Compulsion of threatened bodily injury, 45-2-212.

46-14-102. Evidence of mental disease or defect admissible to prove state of mind. Evidence that the defendant suffered from a mental disease or defect is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind which is an element of the offense.

History: En. 95-502 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-502.

46-14-103. Mental disease or defect excluding fitness to proceed. No person who, as a result of mental disease or defect, is unable to understand the proceedings against him or to assist in his own defense shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures.

History: En. 95-504 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-504.

Part 2

Procedure When Mental Disease or Defect an Issue

46-14-201. Requirement of notice — form of verdict and judgment. (1) Evidence of mental disease or defect is not admissible in a trial on the merits unless the defendant, at the time of entering his plea of not guilty or within 10 days thereafter or at such later time as the court may for good cause permit, files a written notice of his purpose to rely on a mental disease or defect to prove that he did not have a particular state of mind which is an essential element of the offense charged. Otherwise, except on good cause shown, he shall not introduce in his case in chief expert testimony in support of that defense.

(2) When the defendant is found not guilty of the charged offense or offenses or any lesser included offense for the reason that due to a mental disease or defect he could not have a particular state of mind that is an essential element of the offense charged, the verdict and the judgment shall so state.

History: En. 95-503 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-503; amd. Sec. 2, Ch. 713, L. 1979; amd. Sec. 1, Ch. 593, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "When the defendant is found not guilty of the charged offense or offenses or any lesser included offense for the reason" for "When the defendant is acquitted on the ground" at the beginning of (2).

Cross-References

Notice of certain defenses, 46-15-323.

46-14-202. Psychiatric examination of defendant. (1) If the defendant or his counsel files a written notice of his intent to rely on a mental disease or defect under 46-14-201 or raises the issue of his fitness to proceed, the court shall appoint at least one qualified psychiatrist or shall request the superintendent of the Montana state hospital to designate at least one qualified psychiatrist, which designation may be or include himself, to examine and report upon the mental condition of the defendant.

(2) The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period of not

exceeding 60 days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

(3) In the examination any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect.

(4) The cost of the examination must be paid by the county or the state, or both, according to procedures established under 3-5-902(1).

History: En. 95-505 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 88, Ch. 120, L. 1974; R.C.M. 1947, 95-505(1), (2); amd. Sec. 3, Ch. 713, L. 1979; amd. Sec. 1, Ch. 616, L. 1981; amd. Sec. 2, Ch. 361, L. 1983; amd. Sec. 13, Ch. 680, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (4).

1983 Amendment: In (1), substituted "Montana state hospital" for "Warm Springs state hospital".

1981 Amendment: Substituted "If . . . proceed" for "When there is reason to doubt the defendant's fitness to proceed or reason to believe that mental disease or defect of the defendant will otherwise become an issue in the cause" in (1).

Cross-References

Consideration of mental disease or defect in sentencing, 46-14-311.

46-14-203. Report of the examination. (1) The report of the examination shall include the following:

(a) a description of the nature of the examination;

(b) a diagnosis of the mental condition of the defendant;

(c) if the defendant suffers from a mental disease or defect, an opinion as to his capacity to understand the proceedings against him and to assist in his own defense; and

(d) when directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged.

(2) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate therein, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental disease or defect.

(3) The report of the examination shall be filed in triplicate with the clerk of court, who shall deliver copies to the county attorney and to counsel for the defendant.

History: En. 95-505 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 88, Ch. 120, L. 1974; R.C.M. 1947, 95-505(3) thru (5); amd. Sec. 4, Ch. 713, L. 1979.

46-14-204 through 46-14-210 reserved.

46-14-211. Repealed. Sec. 15, Ch. 713, L. 1979.

History: En. 95-507 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 90, Ch. 120, L. 1974; amd. Sec. 4, Ch. 184, L. 1977; R.C.M. 1947, 95-507(1).

46-14-212. Examination by psychiatrist chosen by state or defendant. If either the defendant or the state wishes the defendant to be examined by a qualified psychiatrist or other expert selected by the one proposing the examination in order to determine the defendant's fitness to proceed or whether he had, at the time the offense was committed, a particular state of mind which is an essential element of the offense, the examiner shall be permitted to have reasonable access to the defendant for the purpose of the examination.

History: En. 95-507 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 90, Ch. 120, L. 1974; amd. Sec. 4, Ch. 184, L. 1977; R.C.M. 1947, 95-507(2); amd. Sec. 5, Ch. 713, L. 1979.

46-14-213. Psychiatric testimony upon trial. (1) Upon the trial, any psychiatrist who reported under 46-14-202 and 46-14-203 may be called as a witness by the prosecution or by the defense. If the issue is being tried before a jury, the jury may not be informed that the psychiatrist was designated by the court or by the superintendent of the Montana state hospital. Both the prosecution and the defense may summon any other qualified psychiatrist or other expert to testify, but no one who has not examined the defendant is competent to testify to an expert opinion with respect to the mental condition of the defendant, as distinguished from the validity of the procedure followed by or the general scientific propositions stated by another witness.

(2) When a psychiatrist or other expert who has examined the defendant testifies concerning the defendant's mental condition, he may make a statement as to the nature of his examination, his diagnosis of the mental condition of the defendant at the time of the commission of the offense charged, and his opinion as to the ability of the defendant to have a particular state of mind which is an element of the offense charged. The expert may make any explanation reasonably serving to clarify his diagnosis and opinion and may be cross-examined as to any matter bearing on his competency or credibility or the validity of his diagnosis or opinion.

History: En. 95-507 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 90, Ch. 120, L. 1974; amd. Sec. 4, Ch. 184, L. 1977; R.C.M. 1947, 95-507(3), (4); amd. Sec. 6, Ch. 713, L. 1979; amd. Sec. 3, Ch. 361, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted "Montana state hospital" for "Warm Springs state hospital".

46-14-214 through 46-14-220 reserved.

46-14-221. Determination of fitness to proceed — effect of finding of unfitness — expenses. (1) The issue of the defendant's fitness to proceed may be raised by the defendant or his counsel or by the county attorney. When the issue is raised, it shall be determined by the court. If neither the county attorney nor counsel for the defendant contests the finding of the report filed under 46-14-203, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to summon and cross-examine the psychiatrists who joined in the report and to offer evidence upon the issue.

(2) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in subsection (4) of this section, and the court shall commit him to the custody of the director of the department of institutions to be placed in an appropriate institution of the department of institutions for so long as the unfitness endures.

The committing court shall, within 90 days of commitment, review the defendant's fitness to proceed. If the court finds that he is still unfit to proceed and that it does not appear that he will become fit to proceed within the reasonably foreseeable future, the proceeding against him shall be dismissed, except as provided in subsection (4) of this section, and the county attorney shall petition the court in the manner provided in chapter 20 or 21 of Title 53, whichever is appropriate, to determine the disposition of the defendant pursuant to those provisions.

(3) If the court determines that the defendant lacks fitness to proceed because he is developmentally disabled as provided in 53-20-102(4), the proceeding against him shall be dismissed and the county attorney shall petition the court in the manner provided in chapter 20 of Title 53.

(4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution which is susceptible to fair determination prior to trial and without the personal participation of the defendant.

(5) The expenses of sending the defendant to the custody of the director of the department of institutions to be placed in an appropriate institution of the state department of institutions, of keeping him there, and of bringing him back are chargeable to the state and payable according to procedures established under 3-5-902(1).

History: En. 95-506 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 513, L. 1973; amd. Sec. 89, Ch. 120, L. 1974; amd. Sec. 6, Ch. 568, L. 1977; R.C.M. 1947, 95-506(part); amd. Sec. 7, Ch. 713, L. 1979; amd. Sec. 2, Ch. 616, L. 1981; amd. Sec. 1, Ch. 352, L. 1983; amd. Sec. 14, Ch. 680, L. 1985.

Compiler's Comments

1985 Amendment: In (5) near end after "chargeable to the state" substituted "and payable according to procedures established under 3-5-902(1)" for "but the state may recover them from the estate of the defendant".

1983 Amendment: In first sentence of (1), deleted "only" after "may be raised" and inserted "or by the county attorney"; in (2), inserted second and third sentences; and in (3), substituted "as provided in ... of Title 53" for "as defined by 53-20-102, the proceeding against him shall be suspended, except as provided in subsection (4) of this section, and the court shall proceed to secure treatment as provided in chapter 20, part 1, or chapter 21, part 1, of Title 53".

1981 Amendment: Substituted "or his counsel" for "with the advice of counsel" and made a minor change in phraseology in (1); and deleted "in the first instance" before "chargeable", substituted "state" for "county in which the indictment was found or the information filed" after "chargeable to the", substituted "state" for "county" before "may recover", and deleted "if he has any, or from a town, city, or county bound to provide for and maintain him elsewhere" after "estate of the defendant" in (5).

46-14-222. Proceedings if fitness regained. When the court, on its own motion or upon the application of the director of the department of institutions, the county attorney, or the defendant or his legal representative, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceedings, the court may dismiss the charge and may order the defendant to be discharged or, subject to the law governing the civil commitment of persons suffering from serious mental illness, order the defendant committed to an appropriate institution of the department of institutions.

History: En. 95-506 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 513, L. 1973; amd. Sec. 89, Ch. 120, L. 1974; amd. Sec. 6, Ch. 568, L. 1977; R.C.M. 1947, 95-506(part); amd. Sec. 8, Ch. 713, L. 1979.

Part 3

Disposition of Defendant

46-14-301. Commitment upon finding of not guilty by reason of lack of mental state — hearing to determine release or discharge. (1) When a defendant is found not guilty for the reason that due to a mental disease or defect he could not have a particular state of mind that is an essential element of the offense charged, the court shall order a predisposition investigation in accordance with 46-18-112 and 46-18-113, which must include an investigation of the present mental condition of the defendant. If the trial was by jury, the court shall hold a hearing to determine the appropriate disposition of the defendant. If the trial was by the court, the court may hold a hearing to obtain any additional testimony it considers necessary to determine the appropriate disposition of the defendant. In either case, the testimony and evidence presented at the trial shall be considered by the court in making its determination.

(2) The court, upon finding that the defendant may not be discharged or released without danger to others, shall order the defendant committed to the custody of the superintendent of the Montana state hospital to be placed in an appropriate institution for custody, care, and treatment.

(3) A person committed to the custody of the superintendent shall have a hearing within 180 days of his confinement to determine his present mental condition and whether he may be discharged or released without danger to others. The hearing shall be conducted by the court which ordered the commitment unless that court transfers jurisdiction to the third judicial district. The court shall cause notice of the hearing to be served upon the person, his counsel, and the prosecuting attorney. Such a hearing shall be deemed a civil proceeding, and the burden shall be upon the defendant to prove by a preponderance of the evidence that he may be safely released.

(4) According to the determination of the court upon the hearing, the defendant shall be discharged or released on such conditions as the court determines to be necessary or shall be committed to the custody of the superintendent of the Montana state hospital to be placed in an appropriate institution for custody, care, and treatment.

History: En. 95-508 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 210, L. 1973; amd. Sec. 91, Ch. 120, L. 1974; R.C.M. 1947, 95-508(1); amd. Sec. 9, Ch. 713, L. 1979; amd. Sec. 2, Ch. 593, L. 1981; amd. Sec. 4, Ch. 361, L. 1983.

Compiler's Comments

1983 Amendment: In (2) and (4), substituted "Montana state hospital" for "Warm Springs state hospital".

1981 Amendment: Substituted "found not guilty for the reason" for "acquitted on the ground" after "When a defendant is" at the beginning of (1); added all the material in (1) after "essential element of the offense charged, the court shall order" near the beginning of (1); added "The court, upon finding that the defendant may not be discharged or released without danger to others, shall order the defendant" at the beginning of (2); substituted "A person committed to the custody of the superintendent shall have a hearing within 180 days of his confinement" for "A person so confined shall have a hearing, unless waived, within 50 days of his confinement" at the beginning of (3); and inserted the sentence "The hearing shall be conducted by the court which ordered the commitment unless the court transfers jurisdiction to the third judicial district." in the middle of (3).

46-14-302. Discharge or release upon motion of superintendent. (1) If the superintendent of the Montana state hospital believes that a person committed to his custody under 46-14-301 may be discharged or released on condition without danger to himself or others, he shall make application for the discharge or release of the person in a report to the court by which the person was committed and shall send a copy of the application and report to the county attorney of the county from which the defendant was committed.

(2) The court shall then appoint at least two qualified psychiatrists to examine the person and to report their opinion as to his mental condition within 60 days or a longer period which the court determines to be necessary for the purpose. To facilitate the examinations and the proceedings thereon, the court may have the person confined in any institution located near the place where the court sits which may hereafter be designated by the superintendent of the Montana state hospital as suitable for the temporary detention of irresponsible persons.

(3) If the court is satisfied by the report filed under subsection (1) of this section and the testimony of the reporting psychiatrists which the court considers necessary that the committed person may be discharged or released on condition without danger to himself or others, the court shall order his discharge or his release on conditions which the court determines to be necessary.

(4) If the court is not satisfied, it shall promptly order a hearing to determine whether the person may safely be discharged or released. A hearing is considered a civil proceeding, and the burden is upon the committed person to prove by a preponderance of the evidence that he may safely be discharged or released. According to the determination of the court upon the hearing, the committed person shall then be discharged or released on conditions which the court determines to be necessary or shall be recommitted to the custody of the superintendent of the Montana state hospital, subject to discharge or release only in accordance with the procedures prescribed in this section and 46-14-303.

History: En. 95-508 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 210, L. 1973; amd. Sec. 91, Ch. 120, L. 1974; R.C.M. 1947, 95-508(2), (3); amd. Sec. 15, Ch. 116, L. 1979; amd. Sec. 5, Ch. 361, L. 1983.

Compiler's Comments

1983 Amendment: In (1), (2), and (4), substituted "Montana state hospital" for "Warm Springs state hospital".

46-14-303. Application for discharge or release by committed person. A committed person may make application for his discharge or release to the court by which he was committed, and the procedure to be followed upon the application is the same as that prescribed above in the case of an application by the superintendent of the Montana state hospital. However, an application by a committed person need not be considered until he has been confined for a period of not less than 6 months from the date of the order of commitment, and if the determination of the court is adverse to the application, the person shall not be permitted to file a further application until 1 year has elapsed from the date of any preceding hearing on an application for his release or discharge.

History: En. 95-508 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 210, L. 1973; amd. Sec. 91, Ch. 120, L. 1974; R.C.M. 1947, 95-508(5); amd. Sec. 6, Ch. 361, L. 1983.

Compiler's Comments

1983 Amendment: Substituted "Montana state hospital" for "Warm Springs state hospital".

46-14-304. Recommitment after conditional release. If within 5 years after the conditional release of a committed person the court determines after hearing evidence that the conditions of release have not been fulfilled and that for the safety of the person or for the safety of others his conditional release should be revoked, the court shall immediately order him to be recommitted to the superintendent of the Montana state hospital, subject to discharge or release only in accordance with the procedures prescribed in 46-14-302 and 46-14-303.

History: En. 95-508 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 210, L. 1973; amd. Sec. 91, Ch. 120, L. 1974; R.C.M. 1947, 95-508(4); amd. Sec. 16, Ch. 116, L. 1979; amd. Sec. 7, Ch. 361, L. 1983.

Compiler's Comments

1983 Amendment: Substituted "Montana state hospital" for "Warm Springs state hospital".

46-14-305 through 46-14-310 reserved.

46-14-311. Consideration of mental disease or defect in sentencing. Whenever a defendant is convicted on a verdict or a plea of guilty and he claims that at the time of the commission of the offense of which he was convicted he was suffering from a mental disease or defect which rendered him unable to appreciate the criminality of his conduct or to conform his conduct to the requirements of law, the sentencing court shall consider any relevant evidence presented at the trial and shall require such additional evidence as it considers necessary for the determination of the issue, including examination of the defendant and a report thereof as provided in 46-14-202 and 46-14-203.

History: En. Sec. 10, Ch. 713, L. 1979.

Cross-References

Admissibility of statements made during examination or treatment, 46-14-401.

46-14-312. Sentence to be imposed. (1) If the court finds that the defendant at the time of the commission of the offense of which he was convicted did not suffer from a mental disease or defect as described in 46-14-311, it shall sentence him as provided in Title 46, chapter 18.

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in 46-14-311, any mandatory minimum sentence prescribed by law for the offense need not apply and the court shall sentence him to be committed to the custody of the director of the department of institutions to be placed in an appropriate institution for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1). The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, provided the treatment of the individual and the protection of the public are provided for.

(3) A defendant whose sentence has been imposed under subsection (2) may petition the sentencing court for review of the sentence if the professional person certifies that the defendant has been cured of the mental disease or defect. The sentencing court may make any order not inconsistent

with its original sentencing authority except that the length of confinement or supervision must be equal to that of the original sentence. The professional person shall review the defendant's status each year.

History: En. Sec. 11, Ch. 713, L. 1979.

46-14-313. Discharge of defendant from supervision. At the expiration of the period of commitment or period of treatment specified by the court under 46-14-312(2), the defendant must be discharged from custody and further supervision, subject only to the law regarding the civil commitment of persons suffering from serious mental illness.

History: En. Sec. 12, Ch. 713, L. 1979.

Part 4

Privileged Communications

46-14-401. Admissibility of statements made during examination or treatment. A statement made for the purposes of psychiatric examination or treatment provided for in this chapter by a person subjected to such examination or treatment is not admissible in evidence against him in any criminal proceeding, except a sentencing hearing conducted under 46-14-311, on any issue other than that of his mental condition. It is admissible on the issue of his mental condition, whether or not it would otherwise be considered a privileged communication, unless it constitutes an admission of guilt of the crime charged. In a hearing held under 46-14-311, the court may hear and consider any such statement even if it constitutes an admission of guilt.

History: En. 95-509 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 5, Ch. 184, L. 1977; R.C.M. 1947, 95-509; amd. Sec. 13, Ch. 713, L. 1979.

CHAPTER 15

PRODUCTION OF EVIDENCE

Part 1 — Subpoenas and Witnesses

Section
46-15-101. Subpoenas.
46-15-102. Service of subpoenas.
46-15-103. Indigent defendants.
46-15-104. Expenses of witness.
46-15-105. Persons imprisoned in state prison or in another county.
46-15-106 through 46-15-110 reserved.
46-15-111. Definitions.
46-15-112. Summoning witness in this state to testify in another state.
46-15-113. Witness from another state summoned to testify in this state.
46-15-114. Exemption from arrest and service of process.

Part 2 — Depositions

46-15-201. When depositions taken.
46-15-202. Procedure for taking depositions — filing.
46-15-203. Additional requirements when initiated by state or witness.
46-15-204. Use of depositions at trial.

Part 3 — Discovery—Immunity for Witnesses

46-15-301. Repealed.
46-15-302. Repealed.
46-15-303. Repealed.
46-15-304 through 46-15-310 reserved.
46-15-311. Renumbered 46-15-331 by Code Commissioner, 1985.
46-15-312. Renumbered 46-15-332 by Code Commissioner, 1985.
46-15-313 through 46-15-320 reserved.
46-15-321. Definitions.
46-15-322. Disclosure by prosecution.
46-15-323. Disclosure by accused.
46-15-324. Materials not subject to disclosure.
46-15-325. Failure to call a witness or raise a defense.
46-15-326. Use of materials.
46-15-327. Continuing duty to disclose.
46-15-328. Excision and protective orders.
46-15-329. Sanctions.
46-15-330 reserved.
46-15-331. Compelling testimony or production of evidence — immunity.
46-15-332. Privileged matters.

Part 4 — Evidence in Cases Involving Sexual Offenses

46-15-401. When videotaped testimony admissible.
46-15-402. Procedure at videotaping.
46-15-403. Court order to protect privacy of victim.
46-15-404 through 46-15-410 reserved.
46-15-411. Payment for medical evidence.

Part 1

Subpoenas and Witnesses

Part Cross-References

Rights of accused — compulsory process, Art. II, sec. 24, Mont. Const.

Criminal process on United States land, Title 2, ch. 1, part 2; 2-1-307.

District Court Clerk's duties — record of witnesses, 3-5-510.

District Court Clerk's duties — witness certificate, 3-5-511.

Sections granting immunity to witnesses, 5-5-105, 7-3-4365, 13-36-208, 23-5-141, 25-14-106, 26-2-302, 33-1-316, 40-6-111, 69-14-113.

Witness fees, courts of record, 26-2-501.

Investigative subpoenas, Title 46, ch. 4, part 3.

46-15-101. Subpoenas. Upon the request of the prosecuting attorney or the defendant or his attorney, the court or the clerk of the court shall issue subpoenas. The subpoena shall state the name of the court and the title, if any, of the proceeding and shall command each person to whom it is directed to attend and give testimony and produce objects and documents at the time and place specified therein.

History: En. 95-1801 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1801(a).

Cross-References

Right to process to compel attendance of witnesses, Art. II, sec. 24, Mont. Const.

Subpoena defined, 26-2-101.

Deposition of prospective witness, Title 46, ch. 15, part 2.

46-15-102. Service of subpoenas. (1) A subpoena may be served by a peace officer or by any other person who is not a party and who is not less than 18 years of age. A peace officer must serve in his county any subpoena delivered to him for service either on the part of the state or of the defendant.

(2) Service of a subpoena shall be made by delivering a copy thereof to the person named and, if ordered by the court, by tendering to those residing outside the county of trial the fee for 1 day's attendance and the mileage allowed by law. The person making the service must without delay make a written return of the service subscribed by him stating the time and place of service.

(3) A subpoena requiring attendance of a witness at a hearing or trial may be served anywhere within the state of Montana.

History: En. 95-1801 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1801(e), (f).

Cross-References

Witness fees, Title 26, ch. 2, part 5.

46-15-103. Indigent defendants. When the defendant is indigent, a court order must be obtained if more than six witnesses are to be subpoenaed. If a witness is to be paid more than the regular fee or there are more than six witnesses to be paid, an order of the court or judge is needed. Such order may be made upon proper showing by affidavit or otherwise.

History: En. 95-1801 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1801(b).

46-15-104. Expenses of witness. (1) When a person attends before a magistrate, grand jury, or court as a witness in a criminal case upon a subpoena or in pursuance of an undertaking, the judge, at his discretion, by a written order may direct the clerk of the court to draw his warrant upon the county treasurer in favor of such witness for a reasonable sum, to be specified in the order, for the necessary expenses of the witness.

(2) According to procedures established by the department of commerce under 3-5-902(1), the clerk of district court shall submit to the department a detailed statement containing a list of witnesses and the amount of expenses paid to each by the county. Upon receipt and verification of the statement, the department shall promptly reimburse the designated county for all or a portion of the cost of witness expenses. The county shall deposit the amount reimbursed in its general fund unless the county has a district court fund. If the county has a district court fund, the amount reimbursed must be deposited in such fund.

History: En. 95-1801 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1801(c); amd. Sec. 15, Ch. 680, L. 1985; amd. Sec. 9, Ch. 1, Sp. L. 1985.

Compiler's Comments

1985 Amendments: Chapter 680 inserted (2).

Chapter 1, Sp. L. 1985, amended Ch. 680, L. 1985, by substituting references to "department of commerce" for references to "supreme court administrator" in three places in (2).

Cross-References

Mileage of witnesses, 2-18-503.

Witness fees — courts of record, 26-2-501.

46-15-105. Persons imprisoned in state prison or in another county. When it is necessary to have a person imprisoned in the state prison brought before any court or a person imprisoned in a county jail brought before a court sitting in another county, an order for that purpose may be made by the court and executed by the sheriff of the county where it is made.

History: En. Sec. 2900, Pen. C. 1895; re-en. Sec. 9714, Rev. C. 1907; re-en. Sec. 12432, R.C.M. 1921; Cal. Pen. C. Sec. 1567; re-en. Sec. 12432, R.C.M. 1935; Sec. 94-701-1, R.C.M. 1947; redes. 95-1812 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-1812.

46-15-106 through 46-15-110 reserved.

46-15-111. Definitions. (1) "Witness", as used in 46-15-112 through 46-15-114, shall include a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution, or proceeding.

(2) The word "state" shall include any territory of the United States and the District of Columbia.

History: En. 95-1808 by Sec. 8, Ch. 513, L. 1973; R.C.M. 1947, 95-1808.

46-15-112. Summoning witness in this state to testify in another state. (1) If a judge of a court of record in any state, which by its laws has made provision for commanding persons within that state to attend and testify in this state, certifies under the seal of such court that there is a criminal prosecution pending in such court or that a grand jury investigation has commenced or is about to commence, that a person being within this state is a material witness in such prosecution or grand jury investigation, and that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing and shall make an order directing the witness to appear at a time and place certain for the hearing.

(2) If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending or grand jury investigation has commenced or is about to commence will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons with a copy of the certificate attached directing the witness to attend and testify in the court where the prosecution is pending or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

(3) If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him for said hearing. The judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability, may, in lieu of issuing subpoena or summons, order that said witness be forthwith taken into custody and delivered to an officer of the requesting state.

(4) If the witness who is summoned as provided in this section, after being paid or tendered by some properly authorized person the sum of 10 cents a mile for each mile and $5 for each day that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

History: En. Sec. 2, Ch. 188, L. 1937; Sec. 94-9002, R.C.M. 1947; redes. 95-1809 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-1809.

Cross-References

Punishment for disobeying summons, 46-6-303.

46-15-113. Witness from another state summoned to testify in this state. (1) Whenever a person in any state which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions or grand jury investigations in this state is a material witness in a prosecution pending in a court of record in this state or in a grand jury investigation which has commenced or is about to commence, a judge of the court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. The certificate shall be presented to a judge of a court of record in the county in which the witness is found.

(2) If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state, it is prima facie proof of the desirability of such custody and delivery and the judge may direct that the witness be brought before him immediately. If the judge is satisfied as to the desirability of such custody and delivery, he may order that the witness be immediately taken into custody and delivered to an officer of this state. The order is sufficient authority for the officer to take the witness into custody and hold him unless and until he is released by bail, recognizance, or order of the judge issuing the certificate.

(3) Whenever a witness is summoned to attend and testify in this state, he shall be tendered the sum of 10 cents a mile for each mile and $5 for each day that he is required to travel and attend as a witness. If the state wherein the witness is found has by statutory enactment required that the summoned witness be paid an amount in excess of the amount specified in the preceding sentence, the witness may be tendered the amount required by that state.

(4) A witness who has appeared in accordance with the provisions of the summons may not be required to remain within this state for a longer period of time than the period mentioned in the certificate unless otherwise ordered by the court.

(5) If the witness fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

History: En. Sec. 3, Ch. 188, L. 1937; amd. Sec. 1, Ch. 117, L. 1949; Sec. 94-9003, R.C.M. 1947; redes. 95-1810 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 27, Ch. 184, L. 1977; R.C.M. 1947, 95-1810.

Cross-References

Punishment for failure of defendant to appear upon summons, 46-6-303.

46-15-114. Exemption from arrest and service of process. (1) If a person comes into this state in obedience to a summons directing him to attend and testify in this state, he shall not, while in this state pursuant to such summons or order, be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

(2) If a person passes through this state while going to another state in obedience to a summons or order to attend and testify in that state or while

returning therefrom, he shall not, while so passing through this state, be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons or order.

History: En. Sec. 4, Ch. 188, L. 1937; Sec. 94-9004, R.C.M. 1947; redes. 95-1811 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-1811.

Cross-References

Witness protected from arrest when attending, going, and returning, 26-2-402.

Part 2

Depositions

46-15-201. When depositions taken. (1) If it appears that a prospective witness may be unable to attend or prevented from attending a trial or hearing or is or may become a nonresident of the state or is unwilling to provide relevant information to a requesting party and that his testimony is material and that it is necessary to take his deposition in order to prevent a failure of justice, the court, at any time after the preliminary hearing or the filing of the indictment or the information, may upon motion and notice to the parties order that his testimony be taken by deposition and that any designated books, papers, documents, or tangible objects, not privileged, be produced at the same time and place.

(2) If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court must direct that his deposition be taken at the expense of the state. After the deposition has been subscribed, the court shall discharge the witness.

History: En. 95-1802 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1802(a).

Cross-References

Detention for purpose of securing testimony, Art. II, sec. 23, Mont. Const.

Recognizance by or deposition of witness, 46-11-601.

46-15-202. Procedure for taking depositions — filing. (1) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time.

(2) A deposition shall be taken in the manner provided in civil actions. The court at the request of a defendant may direct that a deposition be taken on written interrogatories in the manner provided in civil actions.

(3) The court shall transmit the deposition to the clerk of the court making the order, there to be filed and held until the action shall come on for trial.

History: En. 95-1802 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1802(b) thru (d).

Cross-References

How depositions taken, Rules 26, 28 through 32, M.R.Civ.P. (see Title 25, ch. 20).

46-15-203. Additional requirements when initiated by state or witness. The following additional requirements shall apply if the deposition is taken at the instance of the state or a witness:

(1) The officer having custody of a defendant shall be notified of the time and place set for examination and keep him in the presence of the witness during the examination.

(2) A defendant not in custody shall be given notice and shall have the right to be present at the examination.

(3) The state shall pay to the defendant's attorney and to a defendant not in custody expenses of travel and subsistence for attendance at the examination.

History: En. 95-1802 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1802(g).

46-15-204. Use of depositions at trial. (1) At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if it appears that:

(a) the witness is dead;

(b) the witness is out of the state of Montana unless it appears that the absence of the witness was procured by the party offering the deposition;

(c) the witness is unable to attend or testify because of sickness or infirmity; or

(d) the party offering the deposition has been unable to procure the attendance of the witness by subpoena.

(2) Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(3) If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.

(4) Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions.

(5) For the purposes of this section, the word "deposition" shall in addition include any sworn testimony previously given by a witness which has been recorded and transcribed by a qualified stenographer and given in the presence of the defendant and cross-examined by him or his attorney on matters relevant to the trial or hearing where such deposition is sought to be used.

History: En. 95-1802 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1802(e), (f).

Cross-References

Objections to receiving deposition in evidence, Rules 30(c), 32, M.R.Civ.P. (see Title 25, ch. 20).

Part 3

Discovery — Immunity for Witnesses

46-15-301. Repealed. Sec. 11, Ch. 202, L. 1985.

History: En. 95-1803 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 26, Ch. 184, L. 1977; R.C.M. 1947, 95-1803(1), (3); amd. Sec. 14, Ch. 713, L. 1979; amd. Sec. 1, Ch. 557, L. 1981.

46-15-302. Repealed. Sec. 11, Ch. 202, L. 1985.

History: (1), (2)En. 95-1801 by Sec. 1, Ch. 196, L. 1967; Sec. 95-1801, R.C.M. 1947; (3)En. 95-1803 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 26, Ch. 184, L. 1977; Sec. 95-1803, R.C.M. 1947; R.C.M. 1947, 95-1801(d), 95-1803(2); amd. Sec. 1, Ch. 496, L. 1979.

46-15-303. Repealed. Sec. 11, Ch. 202, L. 1985.

History: En. 95-1804 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1804.

46-15-304 through 46-15-310 reserved.

46-15-311. Renumbered 46-15-331 by Code Commissioner, 1985.

46-15-312. Renumbered 46-15-332 by Code Commissioner, 1985.

46-15-313 through 46-15-320 reserved.

46-15-321. Definitions. As used in 46-15-321 through 46-15-329, unless the context requires otherwise, the following definitions apply:

(1) "Defendant" means the defense, including the accused, his counsel, and defense counsel's staff or investigators.

(2) "Make available for examination and reproduction" means to make material and information subject to disclosure available upon request at a designated place during specified reasonable times and provide suitable facilities or arrangements for reproducing it. The term does not mean that the disclosing party is required to make copies at its expense, to deliver the materials or information to the other party, or to supply the facilities or materials required to carry out tests on disclosed items. The parties may by mutual consent make any other or additional arrangements.

(3) "Statement" means:

(a) a writing signed or otherwise adopted or approved by a person;

(b) a mechanical, electrical, or other recording of a person's oral communications or a transcript thereof; and

(c) a writing containing a verbatim record as a summary of a person's oral communications.

(4) "Superseded notes" means handwritten notes, including field notes, that have been substantially incorporated into a statement. Such notes may no longer themselves be considered a statement.

History: En. Sec. 1, Ch. 202, L. 1985.

46-15-322. Disclosure by prosecution. (1) Upon arraignment in district court or at such later time as the court may for good cause permit, the prosecutor shall make available to the defendant for examination and reproduction the following material and information within his possession or control:

(a) a list of the names and addresses of all persons whom the prosecutor intends to call as witnesses in the case-in-chief, together with their relevant written or recorded statements;

(b) all written or oral statements of the accused and of any person who will be tried with him;

(c) the names and addresses of experts who have personally examined the accused or any evidence in the particular case, together with the results of physical examinations, scientific tests, experiments, or comparisons, including all written reports or statements made by them in connection with the particular case;

(d) a list or copies of all papers, documents, photographs, or tangible objects that the prosecutor will use at trial or that were obtained from or purportedly belong to the accused; and

(e) all material or information that tends to mitigate or negate the accused's guilt as to the offense charged or that would tend to reduce his punishment therefor.

(2) At the same time the prosecutor shall inform the defendant of and make available to the defendant for examination and reproduction any written or recorded material or information within his possession or control regarding:

(a) whether there has been any electronic surveillance of any conversations to which the accused was a party;

(b) whether a search warrant has been executed in connection with the case;

(c) whether the case has involved an informant, and, if so, his identity if the defendant is entitled to know either or both of these facts under Rule 502 of the Montana Rules of Evidence and 46-15-324(3).

(3) The prosecutor, upon written request, shall make available to the defendant for examination, testing, and reproduction any specified items contained in the list submitted under subsection (1)(d). The prosecutor may impose reasonable conditions, including an appropriate stipulation concerning chain of custody, to protect physical evidence produced under this section.

(4) The prosecutor's obligation of disclosure extends to material and information in the possession or control of members of his staff and of any other persons who have participated in the investigation or evaluation of the case.

(5) Upon motion of the defendant showing that he has substantial need in the preparation of his case for additional material or information not otherwise provided for and that he is unable without undue hardship to obtain the substantial equivalent by other means, the court in its discretion may order any person to make it available to him. The court may, upon the request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.

(6) The prosecutor shall furnish to the defendant no later than 5 days before trial or at such later time as the court may for good cause permit, together with their relevant written or recorded statements, a list of the names and addresses of all persons whom he intends to call as rebuttal witnesses to the defenses of alibi, compulsion, entrapment, justifiable use of force, mistaken identity, or good character or the defense that the accused did not have a particular state of mind that is an element of the offense charged.

History: En. Sec. 2, Ch. 202, L. 1985.

46-15-323. Disclosure by accused. (1) At any time after the filing in district court of an indictment or information, the accused, in connection with the particular crime with which he is charged, shall upon written request of the prosecutor and for good cause shown:

(a) appear in a line-up;

(b) speak for identification by witnesses;

(c) be fingerprinted, palm printed, footprinted, or voiceprinted;

(d) pose for photographs not involving reenactment of an event;

(e) try on clothing;

(f) permit the taking of samples of his hair, blood, saliva, urine, or other specified materials that involve no unreasonable intrusions of his body;

(g) provide specimens of his handwriting; or

(h) submit to a reasonable physical or medical inspection of his body; however, such inspection does not include psychiatric or psychological examination.

(2) The accused is entitled to the presence of counsel at the taking of any evidence pursuant to subsection (1). Subsection (1) supplements and does not limit any other procedures established by law.

(3) Within 30 days after arraignment in district court or at such later time as the court may for good cause permit, the defendant shall provide the prosecutor with a written notice of his intention to introduce evidence at trial of good character or the defenses of alibi, compulsion, entrapment, justifiable use of force, or mistaken identity or the defense that the accused did not have a particular state of mind that is an essential element of the offense charged. The notice must specify for each defense the names and addresses of the persons that will be called as witnesses at trial in support of the defense. Prior to trial the defendant shall, upon motion and showing of good cause, add to the list of witnesses the names of any additional witnesses. After the trial commences, no witnesses may be called by the defendant in support of these defenses unless the name of the witness is included on the list, except for good cause shown. Any evidence that reasonably becomes available after the initial 30 days shall be admitted if 46-15-327 is complied with.

(4) Simultaneously with the notice of defenses submitted under subsection (3), the defendant shall make available to the prosecutor for testing, examination, or reproduction:

(a) the names and addresses of all persons, other than the accused, whom he will call as witnesses at trial, together with all statements made by them in connection with the particular case;

(b) the names and addresses of experts whom he will call at trial, together with the results of their physical examinations, scientific tests, experiments, or comparisons, including all written reports and statements made by them in connection with the particular case; and

(c) a list of all papers, documents, photographs, and other tangible objects that he will use at trial.

(5) The defendant's obligation under this section extends to material and information within the possession or control of the defendant or his attorneys and agents.

(6) Upon motion of the prosecutor showing that he has substantial need in the preparation of his case for additional material or information not otherwise provided for, that he is unable without undue hardship to obtain the substantial equivalent by other means, and that disclosure thereof will not violate the accused's constitutional rights, the court in its discretion may order any person to make such material or information available to him. The court may, upon request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.

History: En. Sec. 3, Ch. 202, L. 1985.

Cross-References

Notice of defense of mental disease or defect, 46-14-201.

46-15-324. Materials not subject to disclosure. (1) Except as provided in subsection (2), disclosure is not required for the work product of the prosecuting or defense attorney.

(2) If exculpatory information is contained in the work product, that information must be disclosed.

(3) Disclosure of the existence of an informant or of the identity of an informant who will not be called to testify is not required if:

(a) disclosure would result in substantial risk to the informant or to his operational effectiveness; and

(b) the failure to disclose will not infringe the constitutional rights of the accused.

History: En. Sec. 4, Ch. 202, L. 1985.

46-15-325. Failure to call a witness or raise a defense. The fact that a witness' name is on a list furnished pursuant to 46-15-321 through 46-15-329 or that a matter contained in a pretrial notice is not raised may not be commented upon at trial unless the court, on motion of a party, allows such comment after finding that the inclusion of the witness' name or the pretrial notice constituted an abuse of the applicable disclosure requirement or that other good cause is shown.

History: En. Sec. 5, Ch. 202, L. 1985.

46-15-326. Use of materials. Except as provided in 46-11-401, any materials, including witness lists, furnished to an attorney pursuant to 46-15-321 through 46-15-329 may not be disclosed to the public but may be disclosed to others only to the extent necessary for the proper conduct of the case.

History: En. Sec. 6, Ch. 202, L. 1985.

46-15-327. Continuing duty to disclose. If at any time after a disclosure has been made any party discovers additional information or material that would be subject to disclosure had it been known at the time of disclosure, such party shall promptly notify all other parties of the existence of the additional information or material and make an appropriate disclosure.

History: En. Sec. 7, Ch. 202, L. 1985.

46-15-328. Excision and protective orders. (1) Upon a motion of any party showing good cause, the court may at any time order that disclosure of the identity of any witness be deferred for any reasonable period of time, not to extend beyond 5 days prior to the date set for trial, or that any other disclosures required by 46-15-321 through 46-15-329 be denied, deferred, or regulated when it finds:

(a) that the disclosure would result in a risk or harm outweighing any usefulness of the disclosure to any party; and

(b) that the risk cannot be eliminated by a less substantial restriction of discovery rights.

(2) Whenever the court finds, on motion of any party, that only a portion of a document or other material is discoverable under 46-15-321 through 46-15-329, it may authorize the party disclosing it to excise that portion of the material which is nondiscoverable and disclose the remainder.

(3) On motion of the party seeking a protective or excision order or in submitting for the court's determination the discoverability of any material or information, the court may permit him to present the material or information for the inspection of the judge alone. Counsel for all other parties are entitled to be present when such presentation is made.

(4) If the court enters an order that any material or any portion thereof is not discoverable under 46-15-321 through 46-15-329, the entire text of the material must be sealed and preserved in the record in the event of an appeal.

History: En. Sec. 8, Ch. 202, L. 1985.

46-15-329. Sanctions. If at any time during the course of the proceeding it is brought to the attention of the court that a party has failed to comply with any of the provisions of 46-15-321 through 46-15-329 or any order issued pursuant to 46-15-321 through 46-15-329, the court may impose any sanction that it finds just under the circumstances, including but not limited to:

(1) ordering disclosure of the information not previously disclosed;

(2) granting a continuance;

(3) holding a witness, party, or counsel in contempt;

(4) precluding a party from calling a witness, offering evidence, or raising a defense not disclosed; or

(5) declaring a mistrial when necessary to prevent a miscarriage of justice.

History: En. Sec. 9, Ch. 202, L. 1985.

46-15-330 reserved.

46-15-331. Compelling testimony or production of evidence — immunity. Before or during trial in any judicial proceeding, a justice of the supreme court or judge of the district court, upon request by the attorney prosecuting or counsel for the defense, may require a person to answer any question or produce any evidence that may incriminate him. If a person is required to give testimony or produce evidence in accordance with this section in any investigation or proceeding, no compelled testimony or evidence or any information directly or indirectly derived from such testimony or evidence may be used against the witness in any criminal prosecution. Nothing in this section prohibits a prosecutor from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the prosecutor determines, in his sole discretion, that the ends of justice would be served thereby. Immunity may not extend to prosecution or punishment for false statements given in any testimony required under this section.

History: En. 95-1807 by Sec. 7, Ch. 513, L. 1973; R.C.M. 1947, 95-1807; amd. Sec. 4, Ch. 577, L. 1983; Sec. 46-15-311, MCA 1983; redes. 46-15-331 by Code Commissioner, 1985.

Compiler's Comments

1983 Amendment: In second sentence, after "proceeding" substituted language from "no compelled testimony" through end of section for "he cannot be prosecuted or subjected to any penalty or forfeiture, other than a prosecution or action for perjury or contempt, for or on account of any transaction, matter, or thing concerning which he testified or produced evidence".

46-15-332. Privileged matters. All matters which are privileged upon the trial are privileged against disclosure through any discovery procedure.

History: En. 95-1803 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 26, Ch. 184, L. 1977; R.C.M. 1947, 95-1803(4); Sec. 46-15-312, MCA 1983; redes. 46-15-332 by Code Commissioner, 1985.

Part 4

Evidence in Cases Involving Sexual Offenses

46-15-401. When videotaped testimony admissible. For any prosecution commenced under 45-5-502(3), 45-5-503, 45-5-505, or 45-5-507, the testimony of the victim, at the request of such victim and with the concurrence of the prosecuting attorney, may be recorded by means of videotape for presentation at trial. The testimony so recorded may be presented at trial and shall be received into evidence. The victim need not be physically present in the courtroom when the videotape is admitted into evidence.

History: En. 95-1814 by Sec. 1, Ch. 384, L. 1977; R.C.M. 1947, 95-1814; amd. Sec. 1, Ch. 151, L. 1979; amd. Sec. 1, Ch. 8, L. 1983.

Compiler's Comments

1983 Amendment: Inserted "45-5-505, or 45-5-613" (now 45-5-507, renumbered by Code Commissioner, 1983).

46-15-402. Procedure at videotaping. (1) The procedural and evidentiary rules of the state of Montana which are applicable to criminal trials within the state of Montana shall apply to the videotape proceedings authorized by this part.

(2) The district court judge, the prosecuting attorney, the victim, the defendant, the defendant's attorney, and such persons as are deemed necessary by the court to make the recordings authorized under this part shall be allowed to attend the videotape proceedings.

History: En. 95-1815 by Sec. 2, Ch. 384, L. 1977; R.C.M. 1947, 95-1815.

46-15-403. Court order to protect privacy of victim. Videotapes which are part of the court record are subject to a protective order of the court for the purpose of protecting the privacy of the victim.

History: En. 95-1816 by Sec. 3, Ch. 384, L. 1977; R.C.M. 1947, 95-1816.

46-15-404 through 46-15-410 reserved.

46-15-411. Payment for medical evidence. (1) The local law enforcement agency within whose jurisdiction an alleged incident of sexual intercourse without consent occurs shall pay for the medical examination of a victim of alleged sexual intercourse without consent when the examination is directed by such agency and when evidence obtained by the examination is used for the investigation or prosecution of an offense.

(2) This section does not require a law enforcement agency to pay any costs of treatment for injuries resulting from the alleged offense.

History: En. 95-1813 by Sec. 1, Ch. 128, L. 1977; R.C.M. 1947, 95-1813.

Cross-References

Sexual intercourse without consent, 45-5-503.

CHAPTER 16

TRIAL IN DISTRICT COURT

Part 1 — General Provisions

Section

46-16-101. Who given precedence on calendar.
46-16-102. Right to jury trial — waiver.

46-16-103. Who decides questions of law and fact.
46-16-104. Plea of not guilty.
46-16-105. Plea of guilty.
46-16-106. Time to prepare for trial.
46-16-107. Failure of county attorney to attend.
46-16-108. Presence of defendant — mistrial for absence.

Part 2 — Rules of Evidence for Criminal Cases

46-16-201. Applicability of civil rules.
46-16-202. Evidence on trial for treason.
46-16-203. Renumbered 45-5-111 and 45-5-112 by Code Commissioner, 1983.
46-16-204 through 46-16-210 reserved.
46-16-211. Who are competent witnesses.
46-16-212. Competency of spouses.
46-16-213. Testimony of person legally accountable.

Part 3 — Selecting the Jury

46-16-301. Formation of trial jury.
46-16-302. Motion to discharge jury panel.
46-16-303. Examination of prospective jurors.
46-16-304. Challenges for cause.
46-16-305. Peremptory challenges.
46-16-306. Time for challenges.
46-16-307. Alternate jurors.

Part 4 — Order of Trial

46-16-401. Order of trial.
46-16-402. When order may be departed from.
46-16-403. Evidence insufficient to go to jury.

Part 5 — Conduct of Jury

46-16-501. Conduct of jury during trial.
46-16-502. View of relevant place or property.
46-16-503. Conduct of jury after retirement — advice from court.
46-16-504. Items which may be taken into the jury room.
46-16-505. Activity of court during jury's absence.

Part 6 — Verdict—Disposition of Defendant

46-16-601. Defendant presumed innocent — reasonable doubt.
46-16-602. Reasonable doubt as to which offense convicts only of least offense.
46-16-603. Form of verdict.
46-16-604. Poll of jury.
46-16-605. Acquittal — when defendant discharged.

Part 7 — Motion for a New Trial

46-16-701. Definition and effect of a new trial.
46-16-702. Motion for a new trial.

Part 1

General Provisions

Part Cross-References

Rights of accused, Art. II, sec. 24, Mont. Const.

Trial by jury, Art. II, sec. 26, Mont. Const.

County Attorney's records of criminal actions, 2-15-501, 7-4-2715.

Records of Attorney General, 2-15-501.
Courts and judicial officers, Title 3, ch. 1.
General rules governing procedure, Title 3, ch. 1, part 3.
Court actions permitted on nonjudicial days, 3-1-302.
District Courts, Title 3, ch. 5.
District Court records — criminal actions, 3-5-506.
District Court Clerk's duties — record of witnesses, 3-5-510.
Criminal contempt, 45-7-309.

46-16-101. Who given precedence on calendar. Prosecutions against defendants held in custody must be disposed of in advance of prosecutions against defendants on bail unless for good cause the court shall direct an action to be tried out of its order.

History: En. 95-1906 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1906.

46-16-102. Right to jury trial — waiver. (1) Defendants in all criminal cases shall have a right to trial by jury not to exceed 12 in number. The parties may agree in writing at any time before the verdict, with the approval of the court, that the jury shall consist of any number less than 12.

(2) Upon written consent of the parties, a trial by jury may be waived.

History: En. 95-1901 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 4, L. 1973; R.C.M. 1947, 95-1901(c), (d).

Cross-References

Rights of accused, Art. II, sec. 24, Mont. Const.
Trial by jury, Art. II, sec. 26, Mont. Const.
Number of a trial jury, 3-15-106.
Trial juries in District Court, Title 3, ch. 15, part 5.
Jury trial of right, Rule 38, M.R.Civ.P. (see Title 25, ch. 20).
Selecting the jury, Title 46, ch. 16, part 3.

46-16-103. Who decides questions of law and fact. (1) All prosecutions deciding issues of fact must be tried by the court and jury, except on a plea of guilty.

(2) Questions of law must be decided by the court and questions of fact by the jury except that on a trial for criminal defamation the jury shall determine both questions of law and of fact. Questions of law and fact must be decided by the court when a trial by jury is waived under 46-16-102(2).

History: En. 95-1901 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 4, L. 1973; R.C.M. 1947, 95-1901(a), (b); amd. Sec. 17, Ch. 116, L. 1979.

Cross-References

Jury decides questions of law and fact in suits for libel and slander, Art. II, sec. 7, Mont. Const.
Province of court and jury, Title 26, ch. 1, part 2.

46-16-104. Plea of not guilty. The plea of not guilty puts in issue every material allegation of the indictment, information, or complaint.

History: En. 95-1901 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 4, L. 1973; R.C.M. 1947, 95-1901(e).

46-16-105. Plea of guilty. (1) Before or during trial, a plea of guilty may be accepted when:

(a) the defendant enters a plea of guilty in open court; and

(b) the court has informed the defendant of the consequences of his plea and of the maximum penalty provided by law which may be imposed upon acceptance of such plea.

(2) At any time before or after judgment the court may, for good cause shown, permit the plea of guilty to be withdrawn and a plea of not guilty substituted.

History: En. 95-1902 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1902.

46-16-106. Time to prepare for trial. After plea, the defendant shall be entitled to a reasonable time to prepare for trial.

History: En. 95-1907 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1907.

46-16-107. Failure of county attorney to attend. If the county attorney fails to attend the trial, the court may appoint some attorney-at-law to perform his duties.

History: En. 95-1903 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1903.

46-16-108. Presence of defendant — mistrial for absence. (1) The defendant must be personally present at the trial and rendition of judgment in all cases tried in the district court. If the defendant fails to appear at any time during the course of the trial and before the jury has retired for its deliberations or the case has been finally submitted to the judge and if after the exercise of reasonable diligence his presence cannot be procured, the court shall declare a mistrial and the cause may again be tried.

(2) In all cases appealed to the supreme court, it shall be conclusively deemed that the defendant was present in court at all stages of the trial unless the record on appeal affirmatively shows to the contrary.

History: En. 95-1904 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1904(part).

Cross-References

Right to appear and defend in person, Art. II, sec. 24, Mont. Const.

Part 2

Rules of Evidence for Criminal Cases

Part Cross-References

Rights of accused — self-incrimination, Art. II, sec. 25, Mont. Const.

Evidence, Title 26.

Nonapplicability of privileges — abused, neglected, and dependent children, 41-3-404.

Extrajudicial confession — evidence of death, 45-5-111.

Inference of mental state, 45-5-112.

Evidence in trial for rape, 45-5-503.

Evidence in trial for promoting prostitution, 45-5-602 through 45-5-604.

Evidence in trial for endangering welfare of children, 45-5-622.

Perjured testimony, 45-7-201.

Perjury and false swearing — evidence required for conviction, 45-7-201, 45-7-202.

Tampering with witnesses, 45-7-206.

Tampering with physical evidence, 45-7-207.

Evidence in prosecution for obscenity, 45-8-201.

Criminal defamation — evidence required for conviction, 45-8-212.

Presumptions — possession of machine gun, 45-8-305.

Evidence — possession of machine gun, 45-8-306.

Blood, breath, and urine tests as evidence — driving while intoxicated, 61-8-403, 61-8-404.

46-16-201. Applicability of civil rules. The rules of evidence in civil actions are applicable also to criminal actions, except as otherwise provided in this code.

History: En. Sec. 2078, Pen. C. 1895; re-en. Sec. 9279, Rev. C. 1907; re-en. Sec. 11977, R.C.M. 1921; Cal. Pen. C. Sec. 1102; re-en. Sec. 11977, R.C.M. 1935; Sec. 94-7209, R.C.M. 1947; redes. 95-3001 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3001.

Cross-References

Evidence, Title 26.

Spousal privilege inapplicable in criminal action by one against the other, 26-1-802.

46-16-202. Evidence on trial for treason. Upon a trial for treason, the defendant cannot be convicted unless upon the testimony of two witnesses to the same overt act or upon confession in open court, nor can evidence be admitted of an overt act not expressly charged in the indictment or information, nor can the defendant be convicted unless one or more overt acts be expressly alleged therein.

History: **En. Sec. 169, p. 243, Bannack Stat.; re-en. Sec. 294, p. 235, Cod. Stat. 1871; re-en. Sec. 294, 3d Div. Rev. Stat. 1879; re-en. Sec. 295, 3d Div. Comp. Stat. 1887; en. Sec. 2079, Pen. C. 1895; re-en. Sec. 9280, Rev. C. 1907; re-en. Sec. 11978, R.C.M. 1921; Cal. Pen. C. Sec. 1103; re-en. Sec. 11978, R.C.M. 1935; Sec. 94-7210, R.C.M. 1947; redes. 95-3002 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3002.**

Cross-References

Treason — of what it consists, Art. II, sec. 30, Mont. Const.

46-16-203. Renumbered 45-5-111 and 45-5-112 by Code Commissioner, 1983.

46-16-204 through 46-16-210 reserved.

46-16-211. Who are competent witnesses. The rules for determining the competency of witnesses in civil actions are applicable also to criminal actions and proceedings, except as otherwise provided in this code.

History: **En. Sec. 2440, Pen. C. 1895; re-en. Sec. 9482, Rev. C. 1907; re-en. Sec. 12175, R.C.M. 1921; Cal. Pen. C. Sec. 1321; re-en. Sec. 12175, R.C.M. 1935; Sec. 94-8801, R.C.M. 1947; redes. 95-3010 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3010.**

Cross-References

Competency of witnesses, Art. VI, Montana Rules of Evidence (see Title 26, ch. 10).

46-16-212. Competency of spouses. Except with the consent of both or in cases of criminal violence by one upon the other, abandonment or neglect of children by either party, or abandonment or neglect of one by the other, neither spouse is a competent witness for or against the other in a criminal action or proceeding to which one or both are parties.

History: **En. Sec. 2441, Pen. C. 1895; re-en. Sec. 9483, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1915; re-en. Sec. 12176, R.C.M. 1921; Cal. Pen. C. Sec. 1322; re-en. Sec. 12176, R.C.M. 1935; Sec. 94-8802, R.C.M. 1947; redes. 95-3011 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 50, Ch. 184, L. 1977; R.C.M. 1947, 95-3011.**

Cross-References

Spousal privilege, 26-1-802.

46-16-213. Testimony of person legally accountable. A conviction cannot be had on the testimony of one responsible or legally accountable for the same offense, as defined in 45-2-301, unless the testimony is corroborated by other evidence which in itself and without the aid of the testimony of the one responsible or legally accountable for the same offense tends to connect the defendant with the commission of the offense. The corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.

History: **En. 95-3012 by Sec. 13, Ch. 513, L. 1973; amd. Sec. 51, Ch. 184, L. 1977; R.C.M. 1947, 95-3012.**

Part 3

Selecting the Jury

Part Cross-References

Trial jury defined, 3-15-104.

Number of trial jury — District Court, 3-15-106.

Jurors' fees, 3-15-201.

Duties of Clerk as to jurors, 3-15-204.

Jurors — competency and exemptions, Title 3, ch. 15, part 3.

Jurors — penalty for nonappearance, 3-15-321.

Jury lists, Title 3, ch. 15, part 4.

Summoning and impaneling the jury, Title 3, ch. 15, part 5.

Summoning the jury — District Court, 3-15-501.

Impaneling the jury — District Court, 3-15-509.

Right to jury trial, 46-16-102.

46-16-301. Formation of trial jury. (1) Trial juries for criminal actions are formed in the same manner as trial juries in civil actions, except that the total number of jurors drawn shall be at least 12 plus the total number of peremptory challenges.

(2) The qualifications of jurors and excuses from jury duty are prescribed in Title 3, chapter 15, part 3.

History: (1)En. 95-1905 by Sec. 1, Ch. 196, L. 1967; Sec. 95-1905, R.C.M. 1947; (2)En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; Sec. 95-1909, R.C.M. 1947; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1905, 95-1909(2)(a); amd. Sec. 5, Ch. 51, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "excuses" for "exemptions" in (2).

Cross-References

Formation of the jury, Title 3, ch. 15, parts 3, 4, and 5; Title 25, ch. 7, part 2; Rule 47, M.R.Civ.P. (see Title 25, ch. 20).

46-16-302. Motion to discharge jury panel. (1) Any objection to the manner in which a jury panel has been selected or drawn shall be raised by a motion to discharge the jury panel. The motion shall be made at least 5 days prior to the term for which the jury is drawn. For good cause shown, the court may entertain the motion at any time thereafter.

(2) The motion shall be in writing supported by affidavit and shall state facts which show that the jury panel was improperly selected or drawn.

(3) If the motion states facts which show that the jury panel has been improperly selected or drawn, it shall be the duty of the court to conduct a hearing. The burden of proof shall be on the movant.

(4) If the court finds that the jury panel was improperly selected or drawn, the court shall order the jury panel discharged and the selection or drawing of a new panel in the manner provided by law.

History: En. 95-1908 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1908.

46-16-303. Examination of prospective jurors. (1) The clerk of court shall make available to the parties a list of prospective jurors with their addresses when the names have been drawn.

(2) The county attorney and the defendant or his attorney shall conduct the examination of prospective jurors. The court may conduct an additional examination. The court may limit the examination by the defendant, his attorney, or the prosecuting attorney if the court believes such examination to be improper.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(1), (3).

46-16-304. Challenges for cause. (1) Each party may challenge jurors for cause, and each challenge must be tried by the court.

(2) A challenge for cause may be taken for all or any of the following reasons or for any other reason which the court determines:

(a) consanguinity or relationship to the defendant or to the person who is alleged to be injured by the offense charged or on whose complaint the prosecution was instituted;

(b) standing in the relation of guardian and ward, attorney and client, master and servant, landlord and tenant, or debtor and creditor with or being a member of the family or in the employment of the defendant or the person who is alleged to be injured by the offense charged or on whose complaint the prosecution was instituted;

(c) being a party adverse to the defendant in a civil action or having complained against or been accused by him in a criminal prosecution;

(d) having served on the grand jury which found the indictment or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment or information;

(e) having served on a trial jury which tried another person for the offense charged;

(f) having been a member of a jury formerly sworn to try the same charge, the verdict of which was set aside or which was discharged without verdict after the case was submitted to it;

(g) having served as a juror in a civil action brought against the defendant for the act charged as an offense;

(h) if the offense charged is punishable with death, having such conscientious opinions as would preclude his finding the defendant guilty, in which case he must neither be permitted nor compelled to serve as a juror;

(i) having a belief that the punishment fixed by law is too severe for the offense charged;

(j) having a state of mind in reference to the case or to either of the parties which would prevent him from acting with entire impartiality and without prejudice to the substantial rights of either party.

(3) An excuse from service on a jury is not a cause of challenge but the privilege of the person excused.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(2)(b), (4); amd. Sec. 6, Ch. 51, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "excuse" for "exemption" and "excused" for "exempted" in (3).

46-16-305. Peremptory challenges. Each defendant shall be allowed eight peremptory challenges in capital cases, six in all other cases tried in the district court before a 12-person jury. There may not be additional challenges for separate counts charged in the indictment or information. If the indictment or information charges a capital offense as well as lesser offenses in separate counts, the maximum number of challenges is eight. The state shall be allowed the same number of peremptory challenges as all of the defendants. In a criminal case tried in the district court before a six-person jury, the state and all the defendants shall be allowed three peremptory challenges each.

When the parties in a criminal case in the district court agree upon a jury consisting of a number of persons other than 6 or 12, they shall also agree in writing upon the number of peremptory challenges to be allowed.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(6).

46-16-306. Time for challenges. All challenges must be interposed before the jury is sworn unless the cause of challenge is discovered after the jury is sworn and before the introduction of any evidence, in which case the court, in its discretion, may allow the challenge to be interposed.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(5).

46-16-307. Alternate jurors. (1) After the jury is impaneled and sworn, the court may direct that one or more alternate jurors be selected in the same manner as principal jurors. The alternate jurors shall take the same oath as the principal jurors.

(2) Each party shall have one additional peremptory challenge for each alternate juror.

(3) Alternate jurors, in the order in which they are called, shall replace jurors who, prior to the time the jury arrives at its verdict, become unable or disqualified to perform their duties. An alternate juror may not join the jury in its deliberation unless called upon by the court to replace a member of the jury. His conduct during the period in which the jury is considering its verdict shall be regulated by instructions of the trial court. An alternate juror who does not replace a principal juror shall be discharged after the jury arrives at its verdict.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(7).

Part 4

Order of Trial

46-16-401. Order of trial. (1) The court may instruct the jury as to its duties. Such general instructions must be settled in the same manner as provided for the settlement of special instructions in subsection (4) of this section.

(2) The county attorney must state the case and offer evidence in support of the prosecution. The defendant may make his opening statement prior to the state's offer of evidence or may state his defense and then offer evidence in support thereof after the state rests.

(3) The parties may then respectively offer rebutting testimony only unless the court for good cause permits them to offer evidence upon their original case.

(4) (a) When the evidence is concluded, if either party desires special instructions to be given to the jury, such instructions shall be reduced to writing, numbered, signed by the party or his attorney, and delivered to the court.

(b) The instructions shall be settled by the court without the presence of the jury. At the settlement counsel for the parties or the defendant, if he is without counsel, shall be allowed reasonable opportunity to examine the instructions requested and proposed to be given by the court and to present and argue to the court objections to the adoption or rejection of any instruction offered by counsel or proposed to be given to the jury by the court. On such settlement of instructions, the respective counsel or the parties shall specify and state the particular ground on which an instruction is objected to. It shall not be sufficient to object generally that the instruction does not state the law or is against the law, but the objection must specify particularly wherein the instruction is insufficient or does not state the law or what particular clause therein is objected to.

(c) The court shall pass upon the objections to the instructions and shall either give each instruction as requested or proposed, positively refuse to do so, or give the instruction with modification. The court shall mark or endorse upon each instruction in such a manner that it shall distinctly appear what instructions were given in whole or in part and, in like manner, those refused or modified and, if modified, wherein and how modified. All instructions must be filed as a part of the record of the cause. No exceptions are necessary to the rulings of the court on the settlement of instructions.

(d) The court reporter shall be present at such settlement and shall take down all the objections to any or all of the instructions given or refused by the court together with modifications made therein and the ruling of the court thereon.

(5) When the instructions have been passed upon and settled by the court and before the arguments to the jury have begun, the court shall charge the jury in writing, giving in such charge only such instructions as have been passed upon and settled. In charging the jury, the court shall give them all matters of law which it thinks necessary for the jury's information in rendering a verdict.

(6) When the jury has been charged, unless the case is submitted to the jury on either side or on both sides without argument, the county attorney must commence and may conclude the argument. If several defendants having several defenses appear by different counsel, the court must determine their relative order in evidence and argument. Counsel, in arguing the case to the judge or jury, may argue and comment upon the law of the case as given in the instructions of the court, as well as upon the evidence of the case.

History: En. 95-1910 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 18, Ch. 420, L. 1975; R.C.M. 1947, 95-1910.

46-16-402. When order may be departed from. When the state of the pleading requires it or in any other case for good reasons and in the discretion of the court, the order prescribed in 46-16-401 may be departed from.

History: En. 95-1911 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1911.

46-16-403. Evidence insufficient to go to jury. When, at the close of the state's evidence or at the close of all the evidence, the evidence is insufficient to support a finding or verdict of guilty, the court may, on its own motion or on the motion of the defendant, dismiss the action and discharge the defendant. However, the court may allow the case to be reopened for good cause shown.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(9).

Part 5

Conduct of Jury

46-16-501. Conduct of jury during trial. (1) The jurors sworn to try an action may at any time before the submission of the case, in the discretion of the court, be permitted to separate or be kept in charge of a proper officer. The officer must be sworn to keep the jurors together until the next meeting of the court, to suffer no person to speak to them or communicate with them or to do so himself on any subject connected with the trial, and to return them into court at the next meeting thereof.

(2) (a) The jury must also at each adjournment of the court, whether permitted to separate or kept in charge of officers, be admonished by the court that it is their duty not to converse among themselves or with anyone else on any subject connected with the trial or to form or express any opinion thereon until the cause is finally submitted to them.

(b) In all cases appealed to the supreme court, it shall be conclusively deemed that the court or judge gave the proper admonition in accordance with the provision of subsection (2)(a) unless the record affirmatively shows to the contrary.

History: En. 95-1904, 95-1913 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1904(part), 95-1913(a), (e).

46-16-502. View of relevant place or property. When the court deems it proper that the jury view any place or personal property pertinent to the case, it will order the jury to be conducted in a body under the custody of the sheriff or bailiff to view said place or personal property in the presence of the defendant and his counsel. The place or personal property will be shown them by a person appointed by the court for that purpose, and they may personally inspect the same. The sheriff or bailiff must be sworn to suffer no person to speak or otherwise communicate with the jury or to do so himself on any subject connected with the trial and to return them into the courtroom without unnecessary delay or at a specified time, as the court may direct.

History: En. 95-1912 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1912.

46-16-503. Conduct of jury after retirement — advice from court. (1) When the jury retires to consider its verdict, an officer of the court must be appointed to keep the jurors together and to prevent conversations between the jurors and others.

(2) After the jury has retired for deliberation, if there is any disagreement among the jurors as to the testimony or if the jurors desire to be informed on any point of law arising in the cause, they must require the officer to conduct them into court. When the jurors are brought into court, the information requested may be given in the discretion of the court. If such information is given, it must be given in the presence of the county attorney and the defendant and his counsel.

History: En. 95-1913 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1913(b), (d); amd. Sec. 18, Ch. 116, L. 1979.

46-16-504. Items which may be taken into the jury room. Upon retiring for deliberation, the jury may take with them all papers which have been received as evidence in the cause, except depositions or copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in his possession. The jury may also take with them any exhibits which the court may deem proper and notes of the proceedings taken by themselves.

History: **En. 95-1913 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1913(c).**

46-16-505. Activity of court during jury's absence. While the jury is absent, the court may adjourn from time to time as to other business, but it must nevertheless be open for every purpose connected with the cause submitted to the jury until a verdict is returned or the jury discharged.

History: **En. 95-1914 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1914.**

Part 6

Verdict — Disposition of Defendant

Part Cross-References

Treason — requirements for conviction, Art. II, sec. 30, Mont. Const.

Evidence sufficient for conviction — Alcoholic Beverage Code, 16-6-205.

Requirements for conviction — criminal defamation, 45-8-212.

46-16-601. Defendant presumed innocent — reasonable doubt. A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal.

History: **En. Sec. 186, p. 245, Bannack Stat.; re-en. Sec. 307, p. 237, Cod. Stat. 1871; re-en. Sec. 307, 3d Div. Rev. Stat. 1879; re-en. Sec. 308, 3d Div. Comp. Stat. 1887; en. Sec. 2072, Pen. C. 1895; re-en. Sec. 9273, Rev. C. 1907; re-en. Sec. 11971, R.C.M. 1921; Cal. Pen. C. Sec. 1096; re-en. Sec. 11971, R.C.M. 1935; Sec. 94-7203, R.C.M. 1947; redes. 95-2901 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2901.**

Cross-References

Instructions to jury on standard of proof to meet burden of persuasion, 26-1-403.

Disputable presumption of innocence, 26-1-602.

46-16-602. Reasonable doubt as to which offense convicts only of least offense. When it appears beyond a reasonable doubt that the defendant has committed an offense but there is reasonable doubt as to whether he is guilty of a given offense or one or more lesser included offenses, he may only be convicted of the greatest included offense about which there is no reasonable doubt.

History: **En. Sec. 186, p. 245, Bannack Stat.; re-en. Sec. 307, p. 237, Cod. Stat. 1871; re-en. Sec. 308, 3d Div. Comp. Stat. 1887; en. Sec. 2073, Pen. C. 1895; re-en. Sec. 9274, Rev. C. 1907; re-en. Sec. 11972, R.C.M. 1921; Cal. Pen. C. Sec. 1097; re-en. Sec. 11972, R.C.M. 1935; Sec. 94-7204, R.C.M. 1947; redes. 95-2902 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 48, Ch. 184, L. 1977; R.C.M. 1947, 95-2902.**

Cross-References

Instructions to jury on standard of proof required to meet burden of persuasion, 26-1-403.

46-16-603. Form of verdict. (1) The jury shall return a general verdict to each offense charged. The verdict must be unanimous in all criminal actions. The verdict shall be signed by the foreman and returned by the jury to the judge in open court.

(2) If there are two or more defendants, the jury, at any time during its deliberations, may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed. If the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(3) The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

History: Ap. p. Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; Sec. 95-1909, R.C.M. 1947; Ap. p. Sec. 1, Ch. 196, L. 1967; Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; amd. Sec. 2, Ch. 4, L. 1973; amd. Sec. 29, Ch. 184, L. 1977; Sec. 95-1915, R.C.M. 1947; R.C.M. 1947, 95-1909(8), 95-1915(1) thru (3).

Cross-References

Right to unanimous verdicts, Art. II, sec. 26, Mont. Const.

46-16-604. Poll of jury. When a verdict is returned, the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not the required concurrence, the jury may be directed to retire for further deliberations or may be discharged.

History: En. 95-1915 by Sec. 1, Ch. 196, L. 1967; Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; amd. Sec. 2, Ch. 4, L. 1973; amd. Sec. 29, Ch. 184, L. 1977; R.C.M. 1947, 95-1915(4).

46-16-605. Acquittal — when defendant discharged. If judgment of acquittal is given on a general verdict and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given except, where the acquittal is because of a variance between the pleading and proof which may be obviated by a new indictment or information, the court may order his detention to the end that a new indictment or information may be filed by the county attorney.

History: En. 95-1916 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1916.

Part 7

Motion for a New Trial

46-16-701. Definition and effect of a new trial. A "new trial" is a reexamination of the issue in the same court before another jury after a verdict or finding has been rendered. The granting of a new trial places the parties in the same position as if there had been no trial.

History: En. 95-2101 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 35, Ch. 184, L. 1977; R.C.M. 1947, 95-2101(1).

Cross-References

Error in instruction as ground for new trial, 46-16-401.

46-16-702. Motion for a new trial. (1) Following a verdict or finding of guilty, the court may grant the defendant a new trial if required in the interest of justice.

(2) The motion for a new trial must be in writing and must specify the grounds therefor. It must be filed by the defendant within 30 days following

a verdict or finding of guilty. Reasonable notice of the motion must be served on the state.

(3) On hearing the motion for a new trial, if justified by law and the weight of the evidence, the court may:

(a) deny the motion;

(b) grant a new trial; or

(c) modify or change the verdict or finding by finding the defendant guilty of a lesser included offense or finding the defendant not guilty.

History: En. 95-2101 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 35, Ch. 184, L. 1977; R.C.M. 1947, 95-2101(2); amd. Sec. 19, Ch. 116, L. 1979.

Cross-References

Scope of appeal by state, 46-20-103.

CHAPTER 17

LOWER COURT PROCEEDINGS

Part 1 — Preliminary Matters—Justices' and City Courts

Section

46-17-101. Initiation of proceedings — amending the complaint.
46-17-102. Record of proceedings.
46-17-103. Change of place of trial.

Part 2 — The Trial—Justices' and City Courts

46-17-201. Trial by jury.
46-17-202. Formation of trial jury.
46-17-203. Plea of guilty.
46-17-204. Time to prepare for trial.
46-17-205. Presence of defendant.
46-17-206 through 46-17-210 reserved.
46-17-211. Verdict.

Part 3 — Procedure After Trial—Justices' and City Courts

46-17-301. Sentence and judgment.
46-17-302. Execution of judgment.
46-17-303. Deposit of fines.
46-17-304. Disposition of fines for city ordinance violations when appealed.
46-17-305 through 46-17-310 reserved.
46-17-311. Appeal.

Part 4 — Procedure in Municipal Court

46-17-401. Applicability of district court rules.
46-17-402. Fees and fines.
46-17-403. Jury trial.
46-17-404. Appeals.

Chapter Cross-References

Justices' Courts, Title 3, ch. 10.

City Courts, Title 3, ch. 11.

Part 1

Preliminary Matters — Justices' and City Courts

Part Cross-References

Duty of police chief in regard to City Court, 7-32-4105.

46-17-101. Initiation of proceedings — amending the complaint. (1) In justices' and city courts, all criminal prosecutions must be commenced by complaint under oath.

(2) The complaint may be amended at any time before verdict or finding with leave of court.

History: En. 95-2001 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2001; amd. Sec. 2, Ch. 62, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (2).

Cross-References

Prosecution of criminal offenses, Art. II, sec. 20, Mont. Const.

46-17-102. Record of proceedings. A docket must be kept by the justice of the peace or city judge, in which must be entered each action and the proceedings of the court therein.

History: En. 95-2002 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2002.

46-17-103. Change of place of trial. (1) The defendant or prosecution may move before trial for a change of place of trial on the ground that there exists in the county in which the charge is pending such prejudice that a fair trial cannot be had in such county.

(2) The motion shall be in writing and supported by affidavit which shall state facts showing the nature of the prejudice alleged. The defendant or the state may file counteraffidavits. The court shall conduct a hearing and determine the merits of the motion.

(3) If the court determines that there exists in the county where the prosecution is pending such prejudice that a fair trial cannot be had, it shall transfer the cause to any other court of competent jurisdiction in any county where a fair trial may be had.

History: En. 95-2003 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 19, Ch. 420, L. 1975; R.C.M. 1947, 95-2003.

Part 2

The Trial — Justices' and City Courts

Part Cross-References

General rules governing proceedings, Title 3, ch. 1, part 3.

Trial jury defined, 3-15-104.

Number of jury — Justices' Courts, 3-15-107.

Jury fees — courts not of record, 3-15-203.

Jurors — competency and exemptions, Title 3, ch. 15, part 3.

Jurors — penalty for nonappearance, 3-15-321.

Juries in inferior courts — summoning and impaneling, Title 3, ch. 15, part 7.

Witness fees — courts not of record, 26-2-503.

46-17-201. Trial by jury. (1) The defendant is entitled to a jury of six qualified persons, but the parties may agree to a number less than six.

(2) A trial by jury may be waived by the consent of both parties expressed in open court and entered in the docket.

(3) Questions of law shall be decided by the court and questions of fact by the jury except that, when a jury trial is waived, the court shall determine both questions of law and questions of fact.

History: En. 95-2004 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 30, Ch. 184, L. 1977; R.C.M. 1947, 95-2004(1).

Cross-References

Right to trial by jury, Art. II, sec. 26, Mont. Const.

46-17-202. Formation of trial jury. (1) At the time of preparing the district court jury list, the county commissioners and clerk and recorder shall prepare a jury list for each justice's and city court within the county. Each list shall consist of residents of the appropriate county, city, or town. The lists shall be selected in any reasonable manner which ensures fairness, and each shall include a number of names sufficient to meet the annual jury requirements of the respective court. Additional lists may be prepared if required. The lists shall be filed in the office of the clerk of the district court. The appropriate list shall be posted in a public place in each county, city, or town, and such list shall comprise the trial jury list for the ensuing year for such county, city, or town.

(2) Trial jurors shall be summoned from the jury list by notifying each one orally that he is summoned and of the time and place at which his attendance is required.

(3) The prosecuting attorney and the defendant or his attorney shall conduct the examination of prospective jurors. The court may conduct an additional examination. The court may limit the examination by the defendant, his attorney, or the prosecuting attorney if the court believes such examination to be improper.

(4) Each party may challenge jurors for cause, and each challenge must be tried by the court. The challenge may be for any cause enumerated in 46-16-304(2). Each defendant shall be allowed three peremptory challenges, and the state shall be allowed the same number of peremptory challenges as all of the defendants.

History: En. 95-2005 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; amd. Sec. 20, Ch. 420, L. 1975; amd. Sec. 31, Ch. 184, L. 1977; R.C.M. 1947, 95-2005; amd. Sec. 18, Ch. 379, L. 1983.

Compiler's Comments

1983 Amendment: In (1), after "the county" substituted "commissioners and clerk and recorder" for "jury commission".

Cross-References

Trial jury defined, 3-15-104.

Number of jury — Justices' Courts, 3-15-107.

Jurors — competency and exemptions, Title 3, ch. 15, part 3.

Jurors — penalty for nonappearance, 3-15-321.

Juries in inferior courts — summoning and impaneling, Title 3, ch. 15, part 7.

46-17-203. Plea of guilty. Before or during trial, a plea of guilty may be accepted when:

(1) the defendant enters a plea of guilty in open court; and

(2) the court has informed the defendant of the consequences of his plea and of the maximum penalty provided by law which may be imposed upon acceptance of such plea.

History: En. 95-2004 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 30, Ch. 184, L. 1977; R.C.M. 1947, 95-2004(2).

46-17-204. Time to prepare for trial. After the plea, the defendant is entitled to a reasonable time to prepare for trial.

History: En. 95-2004 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 30, Ch. 184, L. 1977; R.C.M. 1947, 95-2004(4).

46-17-205. Presence of defendant. The trial may be had in the absence of the defendant but, if his presence is necessary for any purpose, the court may require the personal attendance of the defendant at the trial.

History: En. 95-2004 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 30, Ch. 184, L. 1977; R.C.M. 1947, 95-2004(3).

46-17-206 through 46-17-210 reserved.

46-17-211. Verdict. (1) The verdict of the jury must in all cases be general. It shall be returned by the jury to the judge in open court, who must enter it or cause it to be entered in the minutes. The verdict of the jury must be unanimous.

(2) When several defendants are tried together and the jury cannot agree upon a verdict as to all, the jury may render a verdict as to those in regard to whom it does agree. A judgment must be entered accordingly on the verdict, and the case as to the rest may be tried by another jury.

(3) When a verdict is returned, the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not a unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged.

(4) The jury cannot be discharged after the cause is submitted to them until they have agreed upon and rendered their verdict unless for good cause the court sooner discharges them.

History: En. 95-2006 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 4, L. 1973; rep. and re-en. 95-2006 by Sec. 30, Ch. 513, L. 1973; amd. Sec. 32, Ch. 184, L. 1977; R.C.M. 1947, 95-2006.

Cross-References

Unanimous verdict required, Art. II, sec. 26, Mont. Const.

Part 3

Procedure After Trial — Justices' and City Courts

Part Cross-References

Justices' Courts — costs in criminal actions, 3-10-603.

Procedure on appeal — Alcoholic Beverage Code, 16-6-202.

46-17-301. Sentence and judgment. (1) If a judgment of acquittal is rendered, the defendant must be immediately discharged.

(2) After a plea or verdict of guilty or after a judgment against the defendant, the court must designate a time for sentencing, which must be within a reasonable time after the rendering of the verdict or judgment. The sentence must be entered in the minutes of the court as soon as it is imposed.

(3) If the defendant pleads guilty or is convicted either by the court or by a jury, the court must impose a sentence as provided in chapter 18, part 2,

of this title. If alcohol or other drugs are involved, the court may impose such rehabilitative measures as it considers advisable under the circumstances.

(4) The determination and imposition of sentence are the exclusive duty of the court.

History: En. 95-2007 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 348, L. 1973; amd. Sec. 33, Ch. 184, L. 1977; R.C.M. 1947, 95-2007.

46-17-302. Execution of judgment. (1) The judgment must be executed by the sheriff, constable, marshal, or policeman of the jurisdiction in which the conviction was had.

(2) When a judgment of imprisonment is entered, a certified copy thereof must be delivered to the sheriff or other officer, which is a sufficient warrant for its execution.

(3) If a judgment is rendered imposing a fine only without imprisonment for nonpayment and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given.

(4) A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied in the proportion of 1 day's imprisonment for every $10 of the fine. When such a judgment is rendered, the defendant must be held in custody the time specified in the judgment unless the fine is sooner paid.

(5) Any officer charged with the collection of fines under the provisions of this chapter must return the execution to the judge within 30 days from its delivery to him and pay over to the judge the money collected therefrom, deducting his fees for the collection.

History: En. 95-2008 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2008(part).

46-17-303. Deposit of fines. All fines imposed and collected by a justice's or city court must be paid to the treasurer of the county, city, or town, as the case may be, within 30 days after the receipt of the same. The justice or city judge must take duplicate receipts therefor, one of which he must deposit with the county, city, or town clerk, as the case may be.

History: En. 95-2008 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2008(part).

46-17-304. Disposition of fines for city ordinance violations when appealed. All fines obtained from a judgment in a higher court on an appeal from a city court for violation of a city ordinance, tried de novo in the higher court, shall be paid to the county treasurer, who shall, before 31 days after receipt of the sum, forward one-half of the amount to the treasurer of the city in which the action originated.

History: En. Sec. 1, Ch. 32, L. 1967; R.C.M. 1947, 95-2008.1.

46-17-305 through 46-17-310 reserved.

46-17-311. Appeal. (1) All cases on appeal from justices' or city courts must be tried anew in the district court and may be tried before a jury of six selected in the same manner as a trial jury in a civil action, except that the total number of jurors drawn shall be at least six plus the total number of peremptory challenges.

(2) A party may appeal to the district court by giving written notice of his intention to appeal within 10 days after judgment, except that the state may only appeal in the cases provided for in 46-20-103.

(3) Within 30 days, the entire record of the justice's or city court proceedings must be transferred to the district court or the appeal must be dismissed. It is the duty of the appellant to perfect the appeal.

History: En. 95-2009 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 34, Ch. 184, L. 1977; amd. Sec. 55, Ch. 344, L. 1977; R.C.M. 1947, 95-2009; amd. Sec. 20, Ch. 116, L. 1979; amd. Sec. 1, Ch. 333, L. 1985.

Compiler's Comments

1985 Amendment: In (2) at beginning substituted "A party" for "The defendant" and at end inserted "except that the state may only appeal in the cases provided for in 46-20-103"; and near end of (3) substituted "appellant" for "defendant".

Cross-References

Appellate jurisdiction of District Court, 3-5-303.

City Attorney to prosecute appeals to District Court, 3-11-301.

Part 4

Procedure in Municipal Court

46-17-401. Applicability of district court rules. Except as otherwise provided by Title 3, chapter 6, and this part, the proceedings and practice in municipal court shall be the same as in district court.

History: En. Sec. 20, Ch. 177, L. 1935; re-en. Sec. 5094.19, R.C.M. 1935; R.C.M. 1947, 11-1719(part).

46-17-402. Fees and fines. The fees and fines in municipal court shall be the same as the fees and fines provided by law or ordinance, and all fees and fines collected by the court shall be paid into the city treasury.

History: En. Sec. 18, Ch. 177, L. 1935; re-en. Sec. 5094.18, R.C.M. 1935; amd. Sec. 10, Ch. 429, L. 1977; R.C.M. 1947, 11-1718.

46-17-403. Jury trial. In criminal causes arising under the state law, either party shall be entitled to a jury trial, as provided in justices' courts, except that the police officer shall perform the duties thereto prescribed to the sheriff or constable.

History: En. Sec. 15, Ch. 177, L. 1935; re-en. Sec. 5094.15, R.C.M. 1935; R.C.M. 1947, 11-1715(part).

46-17-404. Appeals. (1) A party may appeal to district court from a judgment of municipal court.

(2) Appeal from a municipal court may be limited by requiring by ordinance that a minimum amount in controversy, not to exceed $200, be met before the district court has jurisdiction to hear the appeal, except:

(a) if the judgment of the municipal court includes incarceration, no minimum amount in controversy may be required for appeal; and

(b) upon petition by an aggrieved party, the district court may, in the interests of justice, accept appeal jurisdiction notwithstanding the amount in controversy.

History: En. Sec. 17, Ch. 177, L. 1935; re-en. Sec. 5094.17, R.C.M. 1935; amd. Sec. 9, Ch. 429, L. 1977; R.C.M. 1947, 11-1717(1), (2).

CHAPTER 18

SENTENCE AND JUDGMENT

Part 1 — Policy and Preliminary Procedure

Section
46-18-101. Correctional policy.
46-18-102. Rendering judgment and pronouncing sentence.
46-18-103. Sentence to be imposed by judge.
46-18-104 through 46-18-110 reserved.
46-18-111. Presentence investigation.
46-18-112. Content of investigation.
46-18-113. Availability of report to defendant and others.

Part 2 — Form of Sentence

46-18-201. Sentences that may be imposed.
46-18-202. Additional restrictions on sentence.
46-18-203. Revocation of suspended or deferred sentence.
46-18-204. Dismissal after deferred imposition.
46-18-205 through 46-18-210 reserved.
46-18-211. When no place of imprisonment is specified.
46-18-212. When no penalty is specified.
46-18-213. When no penalty is specified — felony.
46-18-214 through 46-18-219 reserved.
46-18-220. Sentences for certain offenses committed in state prison — death penalty.
46-18-221. Additional sentence for offenses committed with a dangerous weapon.
46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence.
46-18-223. Hearing to determine application of exceptions.
46-18-224. Additional sentence for offense committed while carrying a handgun loaded with armor-piercing ammunition.
46-18-225 through 46-18-230 reserved.
46-18-231. Fines in felony and misdemeanor cases.
46-18-232. Payment of costs by defendant.
46-18-233. Fine or costs as a condition on suspended or deferred sentence.
46-18-234. When payment of fine or costs due.
46-18-235. Disposition of money collected as fines and costs.
46-18-236. Imposition of charge upon conviction or forfeiture — administration.
46-18-237 through 46-18-240 reserved.
46-18-241. Condition of restitution.
46-18-242. Investigation and report of victim's loss.
46-18-243. Definition.
46-18-244. Type and time of payment — defenses.
46-18-245. Supervision of payment.
46-18-246. Waiver or modification of payment.
46-18-247. Default.
46-18-248. Rights of crime victims' compensation account.
46-18-249. Civil actions by victim.

Part 3 — Death Penalty

46-18-301. Hearing on imposition of death penalty.
46-18-302. Evidence that may be received.
46-18-303. Aggravating circumstances.
46-18-304. Mitigating circumstances.
46-18-305. Effect of aggravating and mitigating circumstances.
46-18-306. Specific written findings of fact.
46-18-307. Automatic review of sentence.
46-18-308. Time for review — consolidation with appeal.
46-18-309. Transmission of transcript and record of trial.
46-18-310. Supreme court's determination as to the sentence.

Part 4 — Factors That Reduce Sentence

46-18-401. Merger of sentences.
46-18-402. Credit for time served.
46-18-403. Credit for incarceration prior to conviction.
46-18-404. Designation as nondangerous offender for purposes of parole eligibility.

Part 5 — Persistent Felony Offenders

46-18-501. Definition of persistent felony offender.
46-18-502. Sentencing of persistent felony offender.
46-18-503. Procedural requirements if sentence to be imposed.

Part 6 — Procedure After Sentencing

46-18-601. Judgment in writing — lien.
46-18-602. Repealed.
46-18-603. Disposition of fines and forfeitures.
46-18-604. Transmittal of sentencing data to supreme court — compilation.

Part 7 — Jail Work Release Program

46-18-701. Parole during employment hours.
46-18-702. Disposition of prisoner's earnings.
46-18-703. Transfer to another county.
46-18-704. Reduction of sentence.
46-18-705. Effect of violation of conditions.

Part 8 — Effect of Conviction

46-18-801. Effect of conviction — civil disabilities.

Part 9 — Appellate Review of Legal Sentences

46-18-901. Review division of the supreme court for review of sentences.
46-18-902. Interested judge not to act.
46-18-903. Application for review.
46-18-904. Procedure upon review.
46-18-905. Decision — finality, report of.

Part 1

Policy and Preliminary Procedure

46-18-101. Correctional policy. (1) It is the purpose of this section to declare the correctional policy of the state of Montana. Laws for the punishment of crime and for the rehabilitation of the convicted are drawn to implement the policy established by this section.

(2) The correctional policy of the state of Montana is to protect society by preventing crime through punishment and rehabilitation of the convicted. The legislature finds that an individual is responsible for and must be held accountable for his actions. Corrections laws and programs must be implemented to impress upon each individual his responsibility for obeying the law. To achieve this end, it is the policy of the state to assure that prosecution of criminal offenses occurs whenever probable cause exists and that punishment of the convicted is certain, timely, and consistent. Furthermore, it is the

state's policy that persons convicted of a crime shall be dealt with in accordance with their individual characteristics, circumstances, needs, and potentialities.

(3) (a) Sentences imposed upon those convicted of crime must be based primarily on the following:

(i) the crime committed;

(ii) the prospects of rehabilitation of the offender;

(iii) the circumstances under which the crime was committed; and

(iv) the criminal history of the offender.

(b) Dangerous offenders who habitually violate the law and victimize the public shall be removed from society and correctively treated in custody for long terms as needed. Other offenders shall be dealt with by probation, suspended sentence, or fine whenever such disposition appears practicable and not detrimental to the needs of public safety and the welfare of the individual. Whenever possible, sentences for offenders shall include restitution to the victim, payment of costs as provided in 46-18-232, and payment of costs of court-appointed counsel as provided in 46-8-113.

History: En. 95-2201 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2201; amd. Sec. 1, Ch. 533, L. 1983.

Compiler's Comments

1983 Amendment: Substituted a new policy for the former language, which read: "This chapter shall be liberally construed to the end that persons convicted of a crime shall be dealt with in accordance with their individual characteristics, circumstances, needs, and potentialities; that dangerous offenders shall be correctively treated in custody for long terms as needed; and that other offenders shall be dealt with by probation, suspended sentence, or fine whenever such disposition appears practicable and not detrimental to the needs of public safety and the welfare of the individual."

46-18-102. Rendering judgment and pronouncing sentence. (1) The judgment shall be rendered in open court.

(2) If the verdict or finding is not guilty, judgment shall be rendered immediately and the defendant shall be discharged from custody or from the obligation of his bail bond.

(3) (a) If the verdict or finding is guilty, sentence shall be pronounced and judgment rendered within a reasonable time.

(b) When the sentence is pronounced, the judge shall clearly state for the record his reasons for imposing the sentence.

History: En. 95-2202 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2202; amd. Sec. 1, Ch. 46, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (3)(b).

46-18-103. Sentence to be imposed by judge. All sentences under this chapter shall be imposed exclusively by the judge of the court.

History: En. 95-2212 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2212.

46-18-104 through 46-18-110 reserved.

46-18-111. Presentence investigation. No defendant convicted of an offense under 45-5-502 through 45-5-505, 45-5-507, or 45-5-625 against a victim who was less than 16 years old when the offense was committed may be sentenced or otherwise disposed of before a written report of investigation by a probation officer is presented to and considered by the court. The investigation must include an evaluation of the defendant and a recommendation as to treatment by a person qualified by professional experience. No defendant convicted of any other offense that may result in commitment for 1 year or more in the state prison may be sentenced or otherwise disposed of before a written report of investigation by a probation officer is presented to and considered by the court unless the court deems such report unnecessary. The court may, in its discretion, order a presentence investigation for a defendant convicted of any lesser crime or offense.

History: En. 95-2203 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2203; amd. Sec. 1, Ch. 173, L. 1985.

Compiler's Comments

1985 Amendment: In first sentence substituted "an offense under 45-5-502 through 45-5-505, 45-5-507, or 45-5-625 against a victim who was less than 16 years old when the offense was committed may" for "a crime which may result in commitment for 1 year or more in the state prison shall", inserted second and third sentences, and transferred "unless the court deems such report unnecessary" to end of third sentence from end of first sentence.

46-18-112. Content of investigation. Whenever an investigation is required, the probation officer shall promptly inquire into the characteristics, circumstances, needs, and potentialities of the defendant; his criminal record and social history; the circumstances of the offense; the time the defendant has been in detention; and the harm to the victim, his immediate family, and the community. All local and state mental and correctional institutions, courts, and police agencies shall furnish the probation officer, on request, the defendant's criminal record and other relevant information. The investigation shall include a physical and mental examination of the defendant when it is desirable in the opinion of the court.

History: En. 95-2204 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2204.

46-18-113. Availability of report to defendant and others. (1) The judge may, in his discretion, make the investigation report or parts of it available to the defendants or others, while concealing the identity of persons who provided confidential information. If the court discloses the identity of persons who provided information, the judge may, in his discretion, allow the defendant to cross-examine those who rendered information.

(2) Such reports shall be part of the record but shall be sealed and opened only on order of the court.

(3) If a defendant is committed to a state institution, the investigation report shall be sent to the institution at the time of commitment.

History: En. 95-2205 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2205.

Part 2

Form of Sentence

Part Cross-References

Excessive sanctions, cruel and unusual punishment, Art. II, sec. 22, Mont. Const.

Punishments allowed — military courts, 10-1-401.

Determination of what sentence may be imposed, 45-1-201.

Rehabilitation instead of prosecution for addicts, 45-9-202.

46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) restitution;

(v) payment of the costs of confinement;

(vi) payment of a fine as provided in 46-18-231;

(vii) payment of costs as provided in 46-18-232 and 46-18-233;

(viii) payment of costs of court appointed counsel as provided in 46-8-113;

(ix) community service;

(x) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(xi) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Such reasonable restrictions or conditions may include any of those listed in subsections (1)(a)(i) through (1)(a)(xi).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) commit the defendant to a correctional institution with or without a fine as provided by law for the offense;

(f) impose any combination of subsections (1)(b) through (1)(e).

(2) If any financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for any misdemeanor or for a period not exceeding 6 years for any felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, any elapsed time, except jail time, is not a credit against the sentence unless the court orders otherwise.

(4) Except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2) and (3), 45-9-102(3), and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102(2) may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion whether or not the sentence was imposed,

imposition of the sentence was deferred, or execution of the sentence was suspended.

(7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-502(3), 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of such imprisonment.

History: En. 95-2206 by Sec. 1, Ch. 196, L. 1967; rep. and re-en. by Sec. 31, Ch. 513, L. 1973; amd. Sec. 36, Ch. 184, L. 1977; amd. Sec. 1, Ch. 436, L. 1977; amd. Sec. 1, Ch. 580, L. 1977; amd. Sec. 12, Ch. 584, L. 1977; R.C.M. 1947, 95-2206(1), (2), (4); amd. Sec. 21, Ch. 116, L. 1979; amd. Sec. 2, Ch. 322, L. 1979; amd. Sec. 2, Ch. 587, L. 1979; amd. Sec. 6, Ch. 198, L. 1981; amd. Sec. 1, Ch. 207, L. 1981; amd. Sec. 7, Ch. 415, L. 1981; amd. Sec. 1, Ch. 189, L. 1983; amd. Sec. 9, Ch. 581, L. 1983; amd. Sec. 1, Ch. 205, L. 1985; amd. Sec. 1, Ch. 524, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 205 at end of (1)(a)(iv) deleted "as provided in subsection (2)"; and in (2) substituted "any financial obligation" for "restitution" and after "(1)(a)", deleted "or (1)(b)".

Chapter 524 inserted (7).

1983 Amendments: Chapter 189, in (1)(a), after "for a period" inserted "except as otherwise provided"; in (1)(a)(iv), inserted "as provided in subsection (2)"; in (1)(b), after "allowed for" substituted "each" for "the"; and inserted (2).

Chapter 581, in (1)(a)(ii), changed "90 days" to "180 days"; and inserted (1)(a)(v). The 1981 amendment note has been modified to reflect the outline changes.

1981 Amendments: Chapter 198 added subsections (1)(a)(vi), (1)(a)(vii), and (1)(a)(ix), relating to payment of fine, payment of costs, and community service, respectively; in (1)(b), added "or conditions" following "restrictions" in two places; added subsection (1)(d) relating to requiring payment of costs; revised subsection references to reflect added subsections.

Chapter 207 added subsection (6), restricting deferral of imposition of sentence in a felony case.

Chapter 415 inserted subsection (1)(a)(viii) relating to payment of costs; inserted "or conditions" after "restrictions" in the second and third sentence of (1)(b); changed "(1)(a)(vi)" to "(1)(a)(ix)" in (1)(b); added subsection (1)(d) relating to payment of costs; and changed "subsections (1)(b), (1)(c), and (1)(d)" to "subsections (1)(b) through (1)(e)" in (1)(f).

Cross-References

Determination of what sentence may be imposed, 45-1-201.

Death as a sentence that may be imposed, Title 46, ch. 18, part 3.

Sentencing of persistent felony offender, 46-18-502.

46-18-202. Additional restrictions on sentence. (1) The district court may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 which it considers necessary to obtain the objectives of rehabilitation and the protection of society:

(a) prohibition of the defendant's holding public office;

(b) prohibition of his owning or carrying a dangerous weapon;

(c) restrictions on his freedom of association;

(d) restrictions on his freedom of movement;

(e) any other limitation reasonably related to the objectives of rehabilitation and the protection of society.

(2) Whenever the district court imposes a sentence of imprisonment in the state prison for a term exceeding 1 year, the court may also impose the restriction that the defendant be ineligible for parole and participation in the supervised release program while serving his term. If such a restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall impose the restriction as part of the sentence and the judgment shall contain a statement of the reasons for the restriction.

(3) The judge in a justice's, city, or municipal court does not have the authority to restrict an individual's rights as enumerated in subsections (1) and (2).

History: En. 95-2206 by Sec. 1, Ch. 196, L. 1967; rep. and re-en. by Sec. 31, Ch. 513, L. 1973; amd. Sec. 36, Ch. 184, L. 1977; amd. Sec. 1, Ch. 436, L. 1977; amd. Sec. 1, Ch. 580, L. 1977;

amd. Sec. 12, Ch. 584, L. 1977; R.C.M. 1947, 95-2206(3); amd. Sec. 22, Ch. 116, L. 1979; amd. Sec. 10, Ch. 583, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "supervised release program" for "prisoner furlough program" in the middle of (2).

Cross-References

Parole eligibility, 46-23-201.

Participation in furlough program, 46-23-411.

46-18-203. Revocation of suspended or deferred sentence. (1) A judge, magistrate, or justice of the peace who has suspended the execution of a sentence or deferred the imposition of a sentence of imprisonment under 46-18-201 or his successor is authorized in his discretion to revoke the suspension or impose sentence and order the person committed. He may also, in his discretion, order the prisoner placed under the jurisdiction of the department of institutions as provided by law or retain such jurisdiction with his court.

(2) A petition seeking revocation of a suspended sentence or imposition of a sentence previously deferred must be filed with the sentencing court during the period of suspension or deferral. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of jurisdiction to rule on the petition.

(3) Prior to the revocation of an order suspending or deferring the imposition of sentence, the person affected shall be given a hearing.

History: En. 95-2206 by Sec. 1, Ch. 196, L. 1967; rep. and re-en. by Sec. 31, Ch. 513, L. 1973; amd. Sec. 36, Ch. 184, L. 1977; amd. Sec. 1, Ch. 436, L. 1977; amd. Sec. 1, Ch. 580, L. 1977; amd. Sec. 12, Ch. 584, L. 1977; R.C.M. 1947, 95-2206(5); amd. Sec. 1, Ch. 328, L. 1981; amd. Sec. 1, Ch. 204, L. 1983.

Compiler's Comments

1983 Amendment: Near middle of (1), after "successor is authorized" deleted "during the period of the suspended sentence or deferred imposition of sentence"; and inserted (2).

1981 Amendment: Substituted "department of institutions" for "board of pardons" after "under the jurisdiction of the" in the second sentence.

46-18-204. Dismissal after deferred imposition. Whenever the court has deferred the imposition of sentence and after termination of the time period during which imposition of sentence has been deferred, upon motion of the court, the defendant, or the defendant's attorney, the court may allow the defendant to withdraw his plea of guilty or may strike the verdict of guilty from the record and order that the charge or charges against him be dismissed.

History: En. 95-2207 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2207.

46-18-205 through 46-18-210 reserved.

46-18-211. When no place of imprisonment is specified. When a statute authorizes imprisonment for its violation but does not prescribe the place of imprisonment, a sentence not to exceed 1 year shall be to the county jail.

History: En. 95-2206.2 by Sec. 31, Ch. 513, L. 1973; R.C.M. 1947, 95-2206.2.

46-18-212. When no penalty is specified. The court, in imposing sentence upon an offender convicted of an offense for which no penalty is otherwise provided or if the offense is designated a misdemeanor and no penalty is otherwise provided, may sentence the offender to a term of imprisonment not to exceed 6 months in the county jail or a fine not to exceed $500, or both.

History: En. 95-2206.3 by Sec. 31, Ch. 513, L. 1973; R.C.M. 1947, 95-2206.3(part).

Cross-References

Classification of offenses, 45-1-201.

Definition of misdemeanor, 45-2-101.

Violation of Montana Elder Abuse Prevention Act misdemeanor, 53-5-525.

46-18-213. When no penalty is specified — felony. The court, in imposing sentence upon an offender convicted of an offense which is designated as a felony and no penalty is otherwise provided, may sentence the offender for any term not to exceed 10 years in the state prison or may fine the offender in an amount not to exceed $50,000 or may impose both such fine and imprisonment.

History: En. 95-2206.4 by Sec. 31, Ch. 513, L. 1973; R.C.M. 1947, 95-2206.4; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Classification of offenses, 45-1-201.

Definition of felony, 45-2-101.

46-18-214 through 46-18-219 reserved.

46-18-220. Sentences for certain offenses committed in state prison — death penalty. A person serving a sentence of imprisonment in the state prison convicted of the offense of attempted deliberate homicide, aggravated assault, or aggravated kidnapping committed while incarcerated at the state prison shall be sentenced to death or life imprisonment as provided in 46-18-301 through 46-18-310.

History: En. Sec. 1, Ch. 696, L. 1985.

46-18-221. Additional sentence for offenses committed with a dangerous weapon. (1) A person who has been found guilty of any offense and who, while engaged in the commission of the offense, knowingly displayed, brandished, or otherwise used a firearm, destructive device, as defined in 45-8-332(1), or other dangerous weapon shall, in addition to the punishment provided for the commission of such offense, be sentenced to a term of imprisonment in the state prison of not less than 2 years or more than 10 years, except as provided in 46-18-222.

(2) A person convicted of a second or subsequent offense under this section shall, in addition to the punishment provided for the commission of the present offense, be sentenced to a term of imprisonment in the state prison of not less than 4 years or more than 20 years, except as provided in 46-18-222. For the purposes of this subsection, the following persons shall be considered to have been convicted of a previous offense under this section:

(a) a person who has previously been convicted of an offense, committed on a different occasion than the present offense, under 18 U.S.C. 924(c); and

(b) a person who has previously been convicted of an offense in this or another state, committed on a different occasion than the present offense, during the commission of which he knowingly displayed, brandished, or otherwise used a firearm, destructive device, as defined in 45-8-332(1), or other dangerous weapon.

(3) The imposition or execution of the minimum sentences prescribed by this section may not be deferred or suspended, except as provided in 46-18-222.

(4) An additional sentence prescribed by this section shall run consecutively to the sentence provided for the offense.

History: **En. 95-2206.17 by Sec. 13, Ch. 584, L. 1977; R.C.M. 1947, 95-2206.17; amd. Sec. 1, Ch. 108, L. 1981.**

Compiler's Comments

1981 Amendment: Added subsection (4).

Cross-References

Sentencing of persistent felony offender, 46-18-502.

46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence. All mandatory minimum sentences prescribed by the laws of this state and the restrictions on deferred imposition and suspended execution of sentence prescribed by subsections (3), (4), and (5) of 46-18-201, 46-18-221(3), 46-18-224, and 46-18-502(3) do not apply if:

(1) the defendant was less than 18 years of age at the time of the commission of the offense for which he is to be sentenced;

(2) the defendant's mental capacity, at the time of the commission of the offense for which he is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the defendant, at the time of the commission of the offense for which he is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another, and the defendant's participation was relatively minor; or

(5) where applicable, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense.

History: **En. 95-2206.18 by Sec. 14, Ch. 584, L. 1977; R.C.M. 1947, 95-2206.18; amd. Sec. 3, Ch. 322, L. 1979; amd. Sec. 1, Ch. 396, L. 1979; amd. Sec. 2, Ch. 207, L. 1981; amd. Sec. 2, Ch. 327, L. 1981; amd. Sec. 2, Ch. 392, L. 1983; amd. Sec. 1, Ch. 532, L. 1983.**

Compiler's Comments

1983 Amendments: Chapter 392, near end of introductory clause, inserted reference to 46-18-224.

Chapter 532 inserted last sentence of (2).

1981 Amendments: Chapter 207 added ", and (5)" after "the restrictions . . . prescribed by subsections (3), (4) [of 46-18-201]" in the first sentence.

Chapter 327 changed the reference to "46-18-502(2)" to "46-18-502(3)" to reflect amendment of that section.

Cross-References

Deliberate homicide, 45-5-102.

Mitigated deliberate homicide, 45-5-103.

Aggravated assault, 45-5-202.

Kidnapping, 45-5-302.

Aggravated kidnapping, 45-5-303.

Robbery, 45-5-401.

Sexual intercourse without consent, 45-5-503.

Criminal sale of dangerous drugs, 45-9-101.

Criminal possession of dangerous drugs, 45-9-102.

Criminal possession with intent to sell, 45-9-103.

Sentencing of persistent felony offender, 46-18-502.

46-18-223. Hearing to determine application of exceptions. (1) When the application of an exception provided for in 46-18-222 is an issue, the court shall grant the defendant a hearing prior to the imposition of sentence to determine the applicability of the exception.

(2) The hearing shall be held before the court sitting without a jury. The defendant and the prosecution are entitled to assistance of counsel, compulsory process, and cross-examination of witnesses who appear at the hearing.

(3) If it appears by a preponderance of the information, including information submitted during the trial, during the sentencing hearing, and in so much of the presentence report as the court relies on, that none of the exceptions at issue apply, the court shall impose the appropriate mandatory sentence. The court shall state the reasons for its decision in writing and shall include an identification of the facts relied upon in making its determination. The statement shall be included in the judgment.

History: En. 95-2206.19 by Sec. 15, Ch. 584, L. 1977; R.C.M. 1947, 95-2206.19.

Cross-References

Duty of court to advise at initial appearance, 46-7-102.

Right to counsel, 46-8-101.

Court to advise defendant of rights, 46-12-202.

Right to counsel — parole hearing, 46-23-204.

Court to advise defendant of rights — extradition proceedings, 46-30-217.

46-18-224. Additional sentence for offense committed while carrying a handgun loaded with armor-piercing ammunition. (1) A person who has been found guilty of an offense in which bodily injury occurred or was attempted or threatened and who knowingly used or carried a handgun loaded with armor-piercing ammunition during the commission of the offense must, in addition to the sentence for the offense, be sentenced to a term of imprisonment in the state prison of not less than 5 years or more than 25 years, except as provided in 46-18-222.

(2) An additional sentence prescribed by this section must run consecutively to the sentence provided for the offense, and except as provided in 46-18-222, the sentence may not be suspended and imposition of it may not be deferred.

(3) For purposes of this section:

(a) "handgun" means any firearm, including a pistol or revolver, originally designed to be fired by the use of a single hand; and

(b) "armor-piercing ammunition" means ammunition which, if fired from a handgun under the test procedure of the national institute of law enforcement and criminal justice standard for the ballistics resistance of police body armor promulgated December 1978, is capable of penetrating bullet-resistant apparel or body armor meeting the requirements of Type IIA of Standard

NILECJ-STD-0101.01 as formulated by the United States department of justice and published in December 1978.

History: En. Sec. 1, Ch. 392, L. 1983.

46-18-225 through 46-18-230 reserved.

46-18-231. Fines in felony and misdemeanor cases. (1) Whenever, upon a verdict or a plea of guilty, a person has been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the court may impose a fine, only in accordance with subsection (3), and in lieu of or in addition to a sentence of imprisonment. For those crimes for which penalties are provided in 45-5-103(2), 45-5-202(2), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2) and (3), 45-9-102(3), and 45-9-103(2), a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment.

(2) Whenever, upon a verdict or plea of guilty, a person has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the court may impose a fine only in accordance with subsection (3).

(3) The court may not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine. In determining the amount and method of payment, the court shall take into account the nature of the crime committed, the financial resources of the defendant, and the nature of the burden that payment of the fine will impose.

(4) Any fine levied under this section in a felony case shall be in an amount fixed by the court not to exceed $50,000.

History: En. Sec. 1, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Section 7, Ch. 198, L. 1981, provided in part:

"(2) There is added to those sections listed in subsection (1) of section 1 [46-18-231], following the language in those sections specifying the term of imprisonment for which an offender may be imprisoned, the words "and may be fined not more than $50,000" or other similar language allowing the court to fine the offender a maximum of $50,000 in addition to a term of imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118."

46-18-232. Payment of costs by defendant. (1) A court may require a convicted defendant in a felony or misdemeanor case to pay costs, as defined in 25-10-201, plus costs of jury service as a part of his sentence. Such costs shall be limited to expenses specifically incurred by the prosecution in connection with the proceedings against the defendant.

(2) The court may not sentence a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(3) A defendant who has been sentenced to pay costs and who is not in default in the payment thereof may at any time petition the court that sentenced him for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or his immediate family, the court may remit all or part of the amount due in costs or modify the method of payment.

History: En. Sec. 2, Ch. 198, L. 1981.

46-18-233. Fine or costs as a condition on suspended or deferred sentence. (1) Whenever a defendant is sentenced to pay a fine or costs under 46-18-231 or 46-18-232 and the imposition or execution of the rest of his sentence is deferred or suspended, the court may make payment of the fine or costs a condition for probation.

(2) A suspended or deferred sentence may not be revoked if the defendant defaults on the payment of the fine and the default is not attributable to an intentional refusal to obey the order of the court or a failure to make a good faith effort to make the payment.

History: En. Sec. 3, Ch. 198, L. 1981.

46-18-234. When payment of fine or costs due. Whenever a defendant is sentenced to pay a fine or costs under 46-18-231 or 46-18-232, the court may grant permission for payment to be made within a specified period of time or in specified installments. If no such permission is included in the sentence, the payment is due immediately.

History: En. Sec. 4, Ch. 198, L. 1981.

46-18-235. Disposition of money collected as fines and costs. The money collected by a court as a result of the imposition of fines or assessment of costs under the provisions of 46-18-231 and 46-18-232 shall be paid to the county general fund of the county in which the court is held, except that:

(1) if the costs assessed include any district court expense listed in 3-5-901, the money collected from assessment of these costs must be paid to the department of commerce for deposit into the state general fund to the extent the expenses were paid by the state; and

(2) if the fine was imposed for a violation of Title 45, chapter 9, the court may order the money paid into the drug forfeiture fund maintained under 44-12-206 for the law enforcement agency which made the arrest from which the conviction and fine arose.

History: En. Sec. 5, Ch. 198, L. 1981; amd. Sec. 6, Ch. 180, L. 1983; amd. Sec. 16, Ch. 680, L. 1985; amd. Sec. 10, Ch. 1, Sp. L. 1985.

Compiler's Comments

1985 Amendments: Chapter 680 inserted (1).

Chapter 1, Sp. L. 1985, amended Ch. 680, L. 1985, by substituting "department of commerce" for "supreme court administrator" in (1).

1983 Amendment: Inserted exception at end of section (now (2)).

46-18-236. Imposition of charge upon conviction or forfeiture — administration. (1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a defendant upon his conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

(a) $10 in each misdemeanor case; and

(b) the greater of $20 or 10% of the fine levied in each felony case.

(2) If a convicting court determines under 46-18-231 and 46-18-232 that the defendant is not able to pay the fine and costs or that he is unable to pay within a reasonable time, the court must waive payment of the charge imposed by this section.

(3) The charge imposed by this section is not a fine and may not be used in determining the jurisdiction of any court.

(4) The total of the charge imposed by this section and any fine assessed may not exceed the maximum fine authorized by law for the offense.

(5) The charges collected under subsection (1) must be deposited with the appropriate local government finance officer or treasurer. If a city municipal court or city or town court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the city or town finance officer or treasurer. If a justice's court or district court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the county finance officer or treasurer.

(6) On or before the 10th day of each month, the county finance officer or treasurer shall remit to the state treasurer for deposit to the state general fund $10 for each misdemeanor case and the greater of $20 or 10% of the fine levied in each felony case. A county may retain up to 10% of the funds remitted to the state treasurer to cover only the costs of administering this section. A city or town finance officer or treasurer may retain the charges collected under subsection (1) by a city municipal court or a city or town court and may use that money for the payment of salaries of the city or town attorney and his deputies.

History: En. Sec. 1, Ch. 719, L. 1985.

Cross-References

Payment of salaries of county officials and assistants, 7-4-2502.

Salary schedule for certain county officers, 7-4-2503.

Amount of compensation for deputies and assistants, 7-4-2505.

Office of city attorney, Title 7, ch. 4, part 46.

46-18-237 through 46-18-240 reserved.

46-18-241. Condition of restitution. As provided in 46-18-201, a sentencing court may require an offender to make restitution to any victim of the offense.

History: En. Sec. 1, Ch. 426, L. 1983.

Cross-References

Treatment of victims and witnesses, Title 46, ch. 24.

46-18-242. Investigation and report of victim's loss. (1) Whenever the court believes that restitution may be a proper condition of a deferred or suspended sentence or the prosecuting attorney requests, the court shall order the probation officer, restitution officer, or other designated person to include in the presentence investigation and report:

(a) documentation of the offender's financial resources and future ability to pay restitution; and

(b) documentation of the victim's pecuniary loss, submitted by the victim.

(2) Where no presentence report is authorized or requested, the court may receive evidence of the offender's ability to pay and the victim's loss at the time of sentencing.

History: **En. Sec. 2, Ch. 426, L. 1983.**

46-18-243. Definition. For purposes of 46-18-241 through 46-18-249, the following definitions apply:

(1) "Pecuniary loss" means:

(a) all special damages, but not general damages, substantiated by evidence in the record, that a person could recover against the offender in a civil action arising out of the facts or events constituting the offender's criminal activities, including without limitation the money equivalent of loss resulting from property taken, destroyed, broken, or otherwise harmed and out-of-pocket losses, such as medical expenses; and

(b) reasonable out-of-pocket expenses incurred by the victim in filing charges or in cooperating in the investigation and prosecution of the offense.

(2) "Victim" means:

(a) a person who suffers loss of property, bodily injury, or death as a result of:

(i) criminally injurious conduct; or

(ii) his good faith effort to prevent criminally injurious conduct;

(b) an insurer or surety with a right of subrogation to the extent it has reimbursed the victim of the offense for his pecuniary loss.

History: **En. Sec. 3, Ch. 426, L. 1983.**

46-18-244. Type and time of payment — defenses. (1) The court shall specify the amount, method, and time of payment to the victim and may permit payment in installments. The court may not establish a payment schedule extending beyond the period for which the sentence has been suspended or deferred under 46-18-201.

(2) In determining the amount, method, and time of payment, the court shall consider the financial resources and future ability of the offender to pay. The court may provide for payment to a victim up to but not in excess of the pecuniary loss caused by the offense. The offender may assert any defense that he could raise in a civil action for the loss sought to be compensated by the restitution order.

History: **En. Sec. 4, Ch. 426, L. 1983.**

46-18-245. Supervision of payment. The court may order a probation officer, restitution officer, or other designated person to supervise the making of restitution and to report to the court any default in payment.

History: **En. Sec. 5, Ch. 426, L. 1983.**

46-18-246. Waiver or modification of payment. An offender may at any time petition the sentencing court to adjust or otherwise waive payment of any part of any ordered restitution. The court shall schedule a hearing and give a victim to whom restitution was ordered notice of the hearing date, place, and time and inform the victim that he will have an opportunity to be heard. If the court finds that the circumstances upon which it based the imposition, amount, method, or time of payment no longer exist or that it otherwise would be unjust to require payment as imposed, the court may adjust or waive unpaid restitution or modify the time or method of making restitution. The court may extend the restitution schedule, but not beyond the period for which the sentence has been suspended or deferred under 46-18-201.

History: **En. Sec. 6, Ch. 426, L. 1983.**

46-18-247. Default. (1) If an offender sentenced to make restitution is in default, the sentencing court, upon the motion of the prosecuting attorney or upon its own motion, may issue an order under 46-18-203 requiring the offender to show cause why he should not be confined for failure to obey the sentence of the court. The court may order the offender to appear at a time, date, and place for a hearing or, if he fails to appear as ordered, issue a warrant for his arrest. The order or warrant must be accompanied by written notice of the offender's right to a hearing as provided in 46-18-203.

(2) If the court finds that the offender's default was attributable to a failure on his part to make a good faith effort to obtain the necessary funds for payment of the ordered restitution, the court may take any action provided for in 46-18-203. If confinement is ordered, the court, after entering the order, may at any time, for good cause shown, reduce the term of confinement and waive satisfaction of the restitution order.

(3) An order to pay restitution constitutes a judgment rendered in favor of the state, and following a default in the payment of restitution or any installment thereof, the sentencing court may order the restitution to be collected by any method authorized for the enforcement of other judgments.

History: **En. Sec. 7, Ch. 426, L. 1983.**

46-18-248. Rights of crime victims' compensation account. (1) Whenever a victim is paid from the crime victims' compensation account established in 53-9-109 for loss arising out of a criminal act, the account is subrogated, to the extent of the account's payment to the victim, to the rights of the victim to any restitution ordered by the court.

(2) The rights of the crime victims' compensation account are subordinate to the claims of multiple victims who have suffered loss arising out of multiple offenses by the same offender or arising from any transaction which is part of the same continuous scheme of criminal activity of an offender.

History: **En. Sec. 8, Ch. 426, L. 1983.**

46-18-249. Civil actions by victim. (1) Sections 46-18-241 through 46-18-249 do not limit or impair the right of a victim to sue and recover damages from the offender in a civil action.

(2) The findings in the sentencing hearing and the fact that restitution was required or paid are not admissible as evidence in a civil action and have no legal effect on the merits of a civil action.

(3) Any restitution paid by the offender to the victim must be set off against any pecuniary loss awarded to the victim in a civil action arising out

of the facts or events which were the basis for the restitution. The court trying the civil action shall determine the amount of any setoff asserted by the defendant under this section.

History: En. Sec. 9, Ch. 426, L. 1983.

Part 3

Death Penalty

46-18-301. Hearing on imposition of death penalty. When a defendant is found guilty of or pleads guilty to an offense for which the sentence of death may be imposed, the judge who presided at the trial or before whom the guilty plea was entered shall conduct a separate sentencing hearing to determine the existence or nonexistence of the circumstances set forth in 46-18-303 and 46-18-304 for the purpose of determining the sentence to be imposed. The hearing shall be conducted before the court alone.

History: En. 95-2206.6 by Sec. 1, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.6.

Cross-References

Deliberate homicide, 45-5-102.

Aggravated kidnapping, 45-5-303.

46-18-302. Evidence that may be received. In the sentencing hearing, evidence may be presented as to any matter the court considers relevant to the sentence, including but not limited to the nature and circumstances of the crime, the defendant's character, background, history, and mental and physical condition, and any other facts in aggravation or mitigation of the penalty. Any evidence the court considers to have probative force may be received regardless of its admissibility under the rules governing admission of evidence at criminal trials. Evidence admitted at the trial relating to such aggravating or mitigating circumstances shall be considered without reintroducing it at the sentencing proceeding. The state and the defendant or his counsel shall be permitted to present argument for or against sentence of death.

History: En. 95-2206.7 by Sec. 2, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.7.

46-18-303. Aggravating circumstances. Aggravating circumstances are any of the following:

(1) The offense was deliberate homicide and was committed by a person serving a sentence of imprisonment in the state prison.

(2) The offense was deliberate homicide and was committed by a defendant who had been previously convicted of another deliberate homicide.

(3) The offense was deliberate homicide and was committed by means of torture.

(4) The offense was deliberate homicide and was committed by a person lying in wait or ambush.

(5) The offense was deliberate homicide and was committed as a part of a scheme or operation which, if completed, would result in the death of more than one person.

(6) The offense was deliberate homicide as defined in subsection (1)(a) of 45-5-102, and the victim was a peace officer killed while performing his duty.

(7) The offense was aggravated kidnapping which resulted in the death of the victim.

(8) The offense was attempted deliberate homicide, aggravated assault, or aggravated kidnapping committed while incarcerated at the state prison by a person who has been previously:

(a) convicted of the offense of deliberate homicide; or

(b) found to be a persistent felony offender pursuant to part 5 of this chapter and one of the convictions was for an offense against the person in violation of Title 45, chapter 5, for which the minimum prison term is not less than 2 years.

History: En. 95-2206.8 by Sec. 3, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.8; amd. Sec. 2, Ch. 696, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (8).

Cross-References

Sentences for certain offenses committed in state prison, 46-18-220.

46-18-304. Mitigating circumstances. Mitigating circumstances are any of the following:

(1) The defendant has no significant history of prior criminal activity.

(2) The offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(3) The defendant acted under extreme duress or under the substantial domination of another person.

(4) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

(5) The victim was a participant in the defendant's conduct or consented to the act.

(6) The defendant was an accomplice in an offense committed by another person, and his participation was relatively minor.

(7) The defendant, at the time of the commission of the crime, was less than 18 years of age.

(8) Any other fact that exists in mitigation of the penalty.

History: En. 95-2206.9 by Sec. 4, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.9.

46-18-305. Effect of aggravating and mitigating circumstances. In determining whether to impose a sentence of death or imprisonment, the court shall take into account the aggravating and mitigating circumstances enumerated in 46-18-303 and 46-18-304 and shall impose a sentence of death if it finds one or more of the aggravating circumstances and finds that there are no mitigating circumstances sufficiently substantial to call for leniency. If the court does not impose a sentence of death and one of the aggravating circumstances listed in 46-18-303 exists, the court may impose a sentence of imprisonment for life or for any term authorized by the statute defining the offense.

History: En. 95-2206.10 by Sec. 5, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.10.

46-18-306. Specific written findings of fact. In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact as to the existence or nonexistence of each of the circumstances set forth in 46-18-303 and 46-18-304. The written findings of fact shall be substantiated by the records of the trial and the sentencing proceeding.

History: En. 95-2206.11 by Sec. 6, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.11.

46-18-307. Automatic review of sentence. The judgment of conviction and sentence of death are subject to automatic review by the supreme court of Montana as provided for in 46-18-308 through 46-18-310.

History: **En. 95-2206.12 by Sec. 7, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.12.**

46-18-308. Time for review — consolidation with appeal. The judgment of conviction and sentence of death are subject to automatic review by the supreme court of Montana within 60 days after certification by the sentencing court of the entire record unless the time is extended by the supreme court for good cause shown. The review by the supreme court has priority over all other cases and shall be heard in accordance with rules promulgated by the supreme court. The sentence review shall be in addition to direct appeal, if taken, and the review and appeal shall be consolidated for consideration.

History: **En. 95-2206.13 by Sec. 8, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.13.**

46-18-309. Transmission of transcript and record of trial. The clerk of the trial court, within 10 days after receiving the transcript, shall transmit the entire record and transcript to the supreme court.

History: **En. 95-2206.14 by Sec. 9, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.14.**

46-18-310. Supreme court's determination as to the sentence. The supreme court shall consider the punishment as well as any errors enumerated by way of appeal. With regard to the sentence, the court shall determine:

(1) whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor;

(2) whether the evidence supports the judge's finding of the existence or nonexistence of the aggravating or mitigating circumstances enumerated in 46-18-303 and 46-18-304; and

(3) whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. The court shall include in its decision a reference to those similar cases it took into consideration.

History: **En. 95-2206.15 by Sec. 10, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.15.**

Cross-References

Deliberate homicide, 45-5-102.

Aggravated kidnapping, 45-5-303.

Part 4

Factors That Reduce Sentence

46-18-401. Merger of sentences. (1) Unless the judge otherwise orders:

(a) whenever a person serving a term of commitment imposed by a court in this state is committed for another offense, the shorter term or shorter remaining term shall be merged in the other term except as provided in subsection (5); and

(b) whenever a person under suspended sentence or on probation for an offense committed in this state is sentenced for another offense, the period still to be served on suspended sentence or probation shall be merged in any new sentence of commitment or probation.

(2) The court merging the sentences shall immediately furnish each of the other courts and penal institutions in which the defendant is confined under sentence with authenticated copies of its sentence, which must cite the sentences being merged.

(3) If an unexpired sentence is merged pursuant to subsection (1), the court which imposed such sentence shall modify it in accordance with the effect of the merger.

(4) Separate sentences for two or more offenses shall run concurrently unless the court otherwise orders.

(5) Except as provided in this subsection, whenever a prisoner is sentenced for an offense committed while he was imprisoned in the state prison or while he was released on parole or under the supervised release program, the new sentence runs consecutively with the remainder of the original sentence. The prisoner starts serving the new sentence when the original sentence has expired or when he is released on parole under chapter 23, part 2, of this title in regard to the original sentence, whichever is sooner. In the latter case, the sentences run concurrently from the time of his release on parole.

History: En. 95-2213 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 2, Ch. 340, L. 1977; R.C.M. 1947, 95-2213; amd. Sec. 23, Ch. 116, L. 1979; amd. Sec. 11, Ch. 583, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "supervised release program" for "prisoner furlough program" in the middle of (5).

Cross-References

Service of term for additional crime, 46-23-217.

46-18-402. Credit for time served. Where defendant has served any portion of his sentence under a commitment based upon a judgment which is subsequently declared invalid or which is modified during the term of imprisonment, such time shall be credited upon any subsequent sentence he may receive upon a new commitment for the same criminal act or acts. In calculating the time imprisoned, the person so convicted shall have the credit for all the time earned in diminution of sentence as provided under 53-30-105, unless the sentencing authority, in its discretion, may choose to deny such credit.

History: En. 95-2214 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2214.

46-18-403. Credit for incarceration prior to conviction. (1) Any person incarcerated on a bailable offense and against whom a judgment of imprisonment is rendered shall be allowed credit for each day of incarceration prior to or after conviction, except that in no case shall the time allowed as a credit exceed the term of the prison sentence rendered.

(2) Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of such offense shall be allowed a credit of $10 for each day so incarcerated prior to conviction, except that in no case shall the amount so allowed or credited exceed the amount of the fine.

History: En. 95-2215 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2215.

46-18-404. Designation as nondangerous offender for purposes of parole eligibility. (1) The sentencing court shall designate an offender a nondangerous offender for purposes of eligibility for parole under part 2 of chapter 23 if:

(a) during the 5 years preceding the commission of the offense for which the offender is being sentenced, the offender was neither convicted of nor incarcerated for an offense committed in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed; and

(b) the court has determined, based on any presentence report and the evidence presented at the trial and the sentencing hearing, that the offender does not represent a substantial danger to other persons or society.

(2) A conviction or incarceration may not be considered under subsection (1)(a) if:

(a) the offender was less than 18 years of age at the time of the commission of the present offense; or

(b) the offender has been pardoned for the previous offense on the grounds of innocence or the conviction for such offense has been set aside in a postconviction hearing.

(3) If the court determines that an offender is not eligible to be designated as a nondangerous offender, it shall make that determination a part of the sentence imposed and shall state the determination in the judgment. Whenever the sentence and judgment do not contain such a determination, the offender is considered to have been designated as a nondangerous offender for purposes of eligibility for parole.

History: En. 95-2206.16 by Sec. 1, Ch. 340, L. 1977; R.C.M. 1947, 95-2206.16; amd. Sec. 1, Ch. 426, L. 1979.

Cross-References

Prisoners eligible for parole, 46-23-201.

Duration of parole for nondangerous offender, 46-23-216.

Part 5

Persistent Felony Offenders

46-18-501. Definition of persistent felony offender. A "persistent felony offender" is an offender who has previously been convicted of a felony and who is presently being sentenced for a second felony committed on a different occasion than the first. An offender is considered to have been previously convicted of a felony if:

(1) the previous felony conviction was for an offense committed in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed;

(2) less than 5 years have elapsed between the commission of the present offense and either:

(a) the previous felony conviction; or

(b) the offender's release on parole or otherwise from prison or other commitment imposed as a result of the previous felony conviction; and

(3) the offender has not been pardoned on the ground of innocence and the conviction has not been set aside in a postconviction hearing.

History: En. 95-1507 by Sec. 5, Ch. 513, L. 1973; amd. Sec. 21, Ch. 184, L. 1977; amd. Sec. 11, Ch. 584, L. 1977; R.C.M. 1947, 95-1507(1).

46-18-502. Sentencing of persistent felony offender. (1) Except as provided in subsection (2), a persistent felony offender shall be imprisoned in the state prison for a term of not less than 5 years or more than 100 years or shall be fined an amount not to exceed $50,000, or both, if he was 21 years of age or older at the time of the commission of the present offense.

(2) If the offender was a persistent felony offender, as defined in 46-18-501, at the time of his previous felony conviction, less than 5 years have elapsed between the commission of the present offense and either the previous felony conviction or the offender's release on parole or otherwise from prison or other commitment imposed as a result of the previous felony conviction, and he was 21 years of age or older at the time of the commission of the present offense, he shall be imprisoned in the state prison for a term of not less than 10 years or more than 100 years or shall be fined an amount not to exceed $50,000, or both.

(3) Except as provided in 46-18-222, the imposition or execution of the first 5 years of a sentence imposed under subsection (1) or the first 10 years of a sentence imposed under subsection (2) may not be deferred or suspended.

(4) Any sentence imposed under subsection (2) shall run consecutive to any other sentence imposed.

History: En. 95-1507 by Sec. 5, Ch. 513, L. 1973; amd. Sec. 21, Ch. 184, L. 1977; amd. Sec. 11, Ch. 584, L. 1977; R.C.M. 1947, 95-1507(2), (3); amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 327, L. 1981.

Compiler's Comments

1981 Amendments: Subsections (3) and (4) of sec. 7, Ch. 198, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Chapter 327 inserted "Except as provided in subsection (2)" at the beginning of (1); inserted subsection (2), except the language relating to the $50,000 fine, which was added pursuant to Ch. 198 (see above); inserted "or the first 10 years of a sentence imposed under subsection (2)" in (3); added subsection (4).

Cross-References

Prohibition on deferral of imposition of sentence, 46-18-201(5).

Additional sentence for offenses committed with a dangerous weapon, 46-18-221.

46-18-503. Procedural requirements if sentence to be imposed. (1) If the state seeks treatment of the accused as a persistent felony offender under 46-18-502, notice of that fact must be given in writing to the accused or his attorney before the entry of a plea of guilty by the accused or before the case is called for trial upon a plea of not guilty.

(2) The notice must conform to the following provisions:

(a) The notice must specify the prior convictions alleged to have been incurred by the accused.

(b) The notice and the charges of prior convictions contained therein shall not be made public or in any manner be made known to the jury before the jury's verdict is returned upon the felony charge. However, if the defendant testifies in his own behalf, he is subject to impeachment as provided in the Montana Rules of Evidence.

(3) If the accused is convicted upon the felony charge, the notice, together with proper proof of timely service, shall be filed with the court before the time fixed for sentencing. The court shall then fix a time for hearing with at least 3 days' notice to the accused.

(4) The hearing shall be held before the court alone. If the court finds any of the allegations of prior conviction true, the accused shall be sentenced under the provisions of 46-18-502.

History: En. 95-1506 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; amd. Sec. 20, Ch. 184, L. 1977; R.C.M. 1947, 95-1506.

Part 6

Procedure After Sentencing

Part Cross-References

Disposal of gambling equipment, 23-5-122.

Disposition of fine or forfeited bond — nonsupport, 45-5-621.

Disposition of fine or forfeited bond — endangering welfare of children, 45-5-622.

46-18-601. Judgment in writing — lien. (1) The judgment shall be reduced to writing and signed by the judge.

(2) A judgment that the defendant pay a fine or costs constitutes a lien upon the real estate of the defendant, which lien dates from the date of the defendant's arrest.

History: En. 95-2208 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2208.

46-18-602. Repealed. Sec. 6, Ch. 104, L. 1981.

History: En. 95-2209 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2209.

46-18-603. Disposition of fines and forfeitures. All fines and forfeitures collected in any court except city courts must be applied to the payment of the costs of the case in which the fine is imposed or the forfeiture incurred. After such costs are paid, the residue, if not otherwise provided by law, must be paid to the county treasurer of the county in which the court is held and by him credited as provided by law. If the fine or forfeiture is paid to the county treasurer, at the time of such payment there shall be filed with the county treasurer a complete statement showing the total of the fine or forfeiture received or incurred with an itemized statement of the costs incurred by the county in such action. The statement shall give the title of the cause and be subscribed by the person or officer making such payment.

History: En. 95-2228 by Sec. 10, Ch. 513, L. 1973; R.C.M. 1947, 95-2228.

Cross-References

Disposal of gambling equipment, 23-5-122.

Disposition of fine or forfeited bond — nonsupport, 45-5-621.

Disposition of fine or forfeited bond — endangering welfare of children, 45-5-622.

46-18-604. Transmittal of sentencing data to supreme court — compilation. (1) Except as provided in subsection (2), the clerk of district court shall record on forms provided by the clerk of the supreme court the following sentencing data for each defendant sentenced:

(a) the name of the case;

(b) whether the conviction was by verdict or plea;

(c) the fine or imprisonment, or both, allowed by law;

(d) the actual fine or imprisonment, or both, imposed;

(e) the percentage of fine or imprisonment, or both, allowed by law that is actually imposed;

(f) the amount of fine or number of years of imprisonment, or both, that are suspended; and

(g) the percentage of fine or imprisonment, or both, imposed that is suspended.

(2) Whenever a sentence of death or of life imprisonment is allowed by law, this fact must be shown in the report, together with the case name and the actual sentence imposed.

(3) The clerk of district court shall report the names of the cases in which sentencing was deferred.

(4) The clerk of district court shall report the reasons given by the judge for the disposition of every case by attaching an extract of that portion of the judgment setting forth the basis for the sentence.

(5) The sentencing judge shall sign the form containing the information recorded by the clerk of district court pursuant to this section.

(6) The clerk of district court shall on a quarterly basis total for each judge the data recorded pursuant to subsections (1) and (2), sign the report, and forward all such data to the clerk of the supreme court.

(7) The clerk of the supreme court shall compile the reports submitted by the district court clerks and distribute the data to all district court clerks and any interested party on April 1 of each year.

(8) The clerk of the supreme court shall provide a form for the recording of data required by this section.

History: En. Sec. 1, Ch. 459, L. 1981.

Part 7

Jail Work Release Program

46-18-701. Parole during employment hours. (1) A court, after having sentenced a person to confinement in a county jail, may, in its discretion, upon request of the county attorney and sheriff of such county and with the consent of the convicted person, order that any part of the imprisonment so imposed be served in confinement with parole during the hours or periods the convicted person is actually employed.

(2) Upon the issuance of such an order under this part, the sheriff shall arrange for the convicted person to continue his regular employment without interruption insofar as is reasonably possible. However, said prisoner shall be confined in the county jail during the hours when he is not employed.

History: En. 95-2216 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2216(a), (b).

46-18-702. Disposition of prisoner's earnings. The earnings of the prisoner shall be collected by the sheriff. From such earnings the sheriff shall pay the prisoner's board and personal expenses both inside and outside the jail and, to the extent directed by the court, pay the support of his dependents, if any. Any balance shall be retained until his discharge.

History: En. 95-2216 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2216(c).

46-18-703. Transfer to another county. The court may by order authorize the sheriff of the sentencing county to arrange with a sheriff of any other county within the state of Montana to have the convicted person transferred to the other county where it appears the convicted person can continue his regular employment in the latter county. When such transfer has been made to another county, the sheriff of the sentencing county shall still collect all moneys earned by the convicted person and shall dispose of said moneys as provided by 46-18-702.

History: En. 95-2216 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2216(f).

46-18-704. Reduction of sentence. The committing court may, in its discretion, upon request of the county attorney and sheriff of such county, reduce the sentence of the prisoner up to one-fourth of the full term if, in the opinion of the court, the prisoner's conduct, diligence, and general attitude merit such diminution.

History: En. 95-2216 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2216(d).

46-18-705. Effect of violation of conditions. In cases where the convicted person violates the conditions of said sentence, he shall be returned to the court. The court may then require that the balance of his sentence be spent in full confinement, and further, the court may cancel any diminution of sentence granted under this part.

History: En. 95-2216 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2216(e).

Part 8

Effect of Conviction

Part Cross-References

Rights of convicted, Art. II, sec. 28, Mont. Const.

Treason — no forfeiture of property, Art. II, sec. 30, Mont. Const.

Sections affecting the right to vote, Art. IV, sec. 2, Mont. Const.; 13-1-111, 13-2-402, 20-20-301.

Sections creating loss of or ineligibility for office, Art. IV, sec. 4, Mont. Const.; 2-16-501, 3-1-1109, 3-1-1110, 3-15-303, 5-5-403, 7-4-2520, 13-36-209, 13-36-210, 23-5-126, 70-30-207.

Sections relating to denial, revocation, or suspension of professional or occupational licenses, 15-30-302, 16-10-403, 20-4-110, 23-4-201, 23-5-322, 23-5-422, 30-10-201, 32-2-409, 33-17-507, 33-17-1001, 33-21-113, 33-30-313, 37-3-323, 37-4-321, 37-6-311, 37-7-311, 37-7-321, 37-8-441, 37-10-311, 37-11-321, 37-13-311, 37-14-321, 37-15-321, 37-16-411, 37-17-311, 37-18-311, 37-19-311, 37-30-425, 37-40-311, 37-43-311, 37-50-321, 37-51-321, 37-60-321, 37-61-301, 37-65-321, 37-66-321, 37-67-331, 39-5-203, 80-7-104, 87-4-122, 87-4-141.

Sections creating loss of or ineligibility for employment, 7-32-2104, 7-32-2107, 7-32-4160, 32-1-322, 32-1-462, 44-1-612.

Sections providing for loss of benefits, 10-2-403, 19-6-703, 19-7-703, 19-8-803, 72-2-104.

Sections creating civil liability, 20-3-332, 23-5-131, 37-51-323, 61-4-406, 75-2-413.

Sections creating forfeiture of money or property, 23-5-122, 23-5-143, 23-5-208, 30-14-132, 33-21-113, 81-5-104, 81-5-111, 87-1-513.

Still competent to be a witness, Rules 601, 609, Montana Rules of Evidence (see Title 26, ch. 10).

Policy to minimize restrictions on or loss of licenses — encourage rehabilitation, Title 37, ch. 1, part 2.

Loss of driver's license, 61-5-205, 61-5-401.

46-18-801. Effect of conviction — civil disabilities. (1) Conviction of any offense shall not deprive the offender of any civil or constitutional rights except as they shall be specifically enumerated by the sentencing judge as necessary conditions of the sentence directed toward the objectives of rehabilitation and the protection of society.

(2) No person shall suffer any civil or constitutional disability not specifically included by the sentencing judge in his order of sentence.

(3) When a person has been deprived of any of his civil or constitutional rights by reason of conviction for an offense and his sentence has expired or he has been pardoned, he shall be restored to all civil rights and full citizenship, the same as if such conviction had not occurred.

History: En. 95-2227 by Sec. 9, Ch. 513, L. 1973; R.C.M. 1947, 95-2227.

Cross-References

Rights of convicted, Art. II, sec. 28, Mont. Const.

Part 9

Appellate Review of Legal Sentences

46-18-901. Review division of the supreme court for review of sentences. (1) The chief justice of the supreme court of Montana shall appoint three district court judges to act as a review division of the supreme court and shall designate one of such judges to act as chairman thereof. The clerk of the Montana supreme court shall record such appointment and shall give notice thereof to the clerk of every district court.

(2) This review division shall meet at least four times a year or more as its business requires, as determined by the chairman. The review division shall hold its meetings at Deer Lodge.

(3) The decision of any two of such judges shall be sufficient to determine any matter before the review division.

(4) The review division may adopt any rules which will expedite its review of sentences. The division is also authorized to appoint a secretary and such clerical help as it deems adequate and fix their compensation.

History: En. 95-2501 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2501(part).

46-18-902. Interested judge not to act. No judge shall sit or act on a review of sentence imposed by him. In any case in which review of a sentence imposed by any of the judges serving on the review division is to be acted on by said division, the chief justice of the supreme court of Montana may designate another judge to act in place of such judge.

History: En. 95-2501 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2501(part).

46-18-903. Application for review. (1) Any person sentenced to a term of 1 year or more in the state prison by any court of competent jurisdiction may within 60 days from the date such sentence was imposed, except in any case in which a different sentence could not have been imposed, file with the clerk of the district court in the county in which judgment was rendered an application for review of the sentence by the review division. Upon imposition of the sentence, the clerk shall give written notice to the person sentenced of his right to make such a request. Such notice shall include a statement that review of the sentence may result in decrease or increase of the sentence within limits fixed by law.

(2) The clerk shall transmit such application to the review division and shall notify the judge who imposed the sentence and the county attorney of

the county in which the sentence was imposed. Such judge may transmit to the review division a statement of his reasons for imposing the sentence and shall transmit such a statement within 7 days if requested to do so by the review division.

(3) The review division may for cause shown consider any late request for review of sentence and may grant such request.

(4) The filing of an application for review shall not stay the execution of the sentence.

History: En. 95-2502 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2502.

46-18-904. Procedure upon review. (1) In each case in which an application for review is filed in accordance with 46-18-903, the review division shall review the judgment so far as it relates to the sentence imposed, either increasing or decreasing the penalty, and any other sentence imposed on the person at the same time and may order such different sentence or sentences to be imposed as could have been imposed at the time of the imposition of the sentence under review or may decide that the sentence under review should stand.

(2) In reviewing any judgment, said division may require the production of presentence reports and any other records, documents, or exhibits relevant to such review proceedings. The appellant may appear and be represented by counsel, and the state may be represented by the county attorney of the county in which the sentence was imposed. Any other interested person, including the sentencing judge, may attend and participate in the review proceedings.

(3) The sentence imposed by the district court is presumed correct. If the review division orders a different sentence, the court sitting in any convenient county shall resentence the defendant as ordered by the review division. Time served on the sentence reviewed shall be deemed to have been served on the sentence substituted.

History: En. 95-2503 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2503(part); amd. Sec. 1, Ch. 654, L. 1985.

Compiler's Comments

1985 Amendment: In (2) inserted last sentence; and in (3) inserted first sentence.

46-18-905. Decision — finality, report of. (1) The decision of the review division in each case shall be final, and the reasons for such decision shall be stated therein. The original of each decision shall be sent to the clerk of the court for the county in which the judgment was rendered, and a copy shall be sent to the judge who imposed the sentence reviewed, the person sentenced, and the principal officer of the institution in which he is confined.

(2) The decision shall be reported in the Montana Reports.

History: En. 95-2503 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2503(part).

CHAPTER 19

EXECUTION OF JUDGMENT

Part 1 — Method of Execution

Section

46-19-101. Commitment of defendant.
46-19-102. Execution of a fine.

46-19-103. Execution of death sentence.

Part 2 — Suspension of Execution of Death

46-19-201. When and how mental fitness of defendant determined.
46-19-202. Proceedings following determination regarding fitness.
46-19-203. Procedure for determining if woman is pregnant.
46-19-204. Proceedings following determination regarding pregnancy.

Part 3 — Commitment to Prison in Another State

46-19-301. Western Interstate Corrections Compact — contents.
46-19-302. Effectuation of purposes of compact.
46-19-303. Power of governor to enter into contracts.
46-19-304. Commitment or transfer of inmate to institution outside of state.
46-19-305. Hearings requested by other states.

Part 1

Method of Execution

Part Cross-References

County jails, Title 7, ch. 32, part 22.

Escape from custody — use of force to prevent, 45-3-106.

Escape from custody — definition, 45-7-306.

Possession of weapon by prisoner, 45-8-318.

State prison, Title 53, ch. 30, part 1.

46-19-101. Commitment of defendant. Upon rendition of judgment after pronouncement of a sentence imposing punishment of imprisonment or death, the court shall commit the defendant to the custody of the sheriff, who shall deliver the defendant to the place of his confinement or execution.

History: En. 95-2301 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2301.

46-19-102. Execution of a fine. (1) If the judgment is for a fine alone, execution may issue thereon as on a judgment in a civil case.

(2) If the judgment is for a fine and imprisonment until fine be paid, the defendant must be committed to the custody of the proper officer and by him detained until the judgment is complied with. The imprisonment must not exceed 1 day for every $10 of the fine.

History: En. 95-2302 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2302.

Cross-References

Execution of a judgment, Title 25, ch. 13 and 14.

46-19-103. Execution of death sentence. (1) In pronouncing the sentence of death, the court shall set the date of execution which must not be less than 30 days or more than 60 days from the date the sentence is pronounced. If execution has been stayed by any court and the date set for execution has passed prior to dissolution of the stay, the court in which the defendant was previously sentenced shall, upon dissolution of the stay, set a new date of execution for not less than 5 or more than 90 days from the day the date is set. The defendant is entitled to be present in court on the day the new date of execution is set.

(2) Pending execution of a sentence of death, the sheriff may deliver the defendant to the state prison for confinement, and the state shall bear the costs of imprisoning the defendant from the date of delivery.

(3) The punishment of death must be inflicted by hanging the defendant by the neck until he is dead or, at the election of the defendant, by administration of a continuous, intravenous injection of a lethal quantity of an ultra-fast-acting barbiturate in combination with a chemical paralytic agent until a licensed physician pronounces that the defendant is dead according to accepted standards of medical practice.

(4) The warden of the Montana state prison shall provide a suitable and efficient room or place in which executions will be carried out, enclosed from public view, within the walls of the state prison, and shall provide all implements necessary to the execution. The warden shall, subject to subsection (4), select the person to perform the execution, and the warden or his designee shall supervise the execution.

(5) An execution carried out by lethal injection must be performed by a person selected by the warden and trained to administer the injection. The person administering the injection need not be a physician, registered nurse, or licensed practical nurse licensed or registered under the laws of this or any other state. The warden must allow the execution to be observed by 12 witnesses, 3 of whom may be designated by the person to be executed.

(6) After the execution, the warden shall make a return upon the death warrant showing time, mode, and manner in which it was executed.

History: En. 95-2303 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2303; amd. Sec. 1, Ch. 191, L. 1981; amd. Sec. 1, Ch. 292, L. 1983; amd. Sec. 4, Ch. 411, L. 1983.

Compiler's Comments

1983 Amendments — Applicability: Chapter 292 inserted (2).

Chapter 411, in (3), after "by the neck until he is dead" inserted optional provision for death by lethal injection; in (4), substituted present language for "A sentence of death must be executed within the walls or yard of a jail or some convenient private place in the county where the trial took place."; in (5), substituted present language for "The sheriff of the county must be present and shall supervise such execution which shall be conducted in the presence of a physician, the county attorney of the county, and at least 12 reputable citizens to be selected by the sheriff. The sheriff shall, at the request of the defendant, permit such priests or ministers, not exceeding two, as the defendant may name and only persons, relatives, or friends, not to exceed five, to be present at the execution together with such peace officers as he may think expedient to witness the execution. No other persons than those mentioned in this subsection can be present at the execution, nor can any person under age be allowed to witness the same."; and in (6), changed "sheriff" to "warden".

Section 7, Ch. 411, L. 1983, provided: "This act applies to death sentences whether first pronounced before or after its effective date. The legislature intends this act to apply retroactively under 1-2-109." Effective on passage and approval, April 7, 1983.

1981 Amendment: Added the last sentence of (1) relating to setting the execution date after a stay.

Cross-References

Execution of death sentence justified, 45-3-109.

Definition of "dead", 50-22-101.

Part 2

Suspension of Execution of Death

46-19-201. When and how mental fitness of defendant determined. If after judgment of death there is good reason to suppose that the defendant lacks mental fitness, the mental fitness of the defendant will be determined in accordance with the provisions of chapter 14 of this title.

History: En. 95-2304 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2304.

46-19-202. Proceedings following determination regarding fitness. (1) If it is found that defendant is mentally fit as provided in 46-19-201, the warden of the Montana state prison shall execute the judgment.

(2) If it is found that he lacks fitness, the execution of judgment must be suspended and the court shall commit him to the custody of the superintendent of the Montana state hospital to be placed in an appropriate institution of the department of institutions for so long as the lack of fitness endures.

(3) When the court, on its own motion or upon application of the superintendent of the Montana state hospital, the county prosecuting officer, or the defendant or his legal representative, determines after a hearing, if a hearing is requested, that the defendant has regained fitness to proceed, the warden must be directed by the court to carry out the execution. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to proceed with execution of the sentence, the court may suspend the execution of the sentence and may order the defendant to be discharged.

History: En. 95-2305 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 94, Ch. 120, L. 1974; R.C.M. 1947, 95-2305; amd. Sec. 8, Ch. 361, L. 1983; amd. Sec. 5, Ch. 411, L. 1983.

Compiler's Comments

1983 Amendments — Applicability: Chapter 361, in (2) and (3), substituted "Montana state hospital" for "Warm Springs state hospital".

Chapter 411, in (1) and (3), substituted reference to state prison warden for reference to sheriff.

Section 7, Ch. 411, L. 1983, provided: "This act applies to death sentences whether first pronounced before or after its effective date. The legislature intends this act to apply retroactively under 1-2-109." Effective on passage and approval, April 7, 1983.

46-19-203. Procedure for determining if woman is pregnant. If there is good reason to suppose a woman against whom a judgment of death is rendered is pregnant, the sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, must summon a jury of three physicians to inquire into the supposed pregnancy. Immediate notice of this inquiry must be given to the county attorney of the county who must attend the inquiry and may produce his own witnesses.

History: En. 95-2306 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2306.

46-19-204. Proceedings following determination regarding pregnancy. If it is found by the inquiry that the woman is not pregnant, the warden of the Montana state prison shall execute the judgment. If it is found that the woman is pregnant, the warden shall suspend the execution of judgment and transmit the inquisition to the governor. When the governor is satisfied that the woman is no longer pregnant, he may issue his warrant appointing a day for the execution of the judgment.

History: En. 95-2307 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2307; amd. Sec. 6, Ch. 411, L. 1983.

Compiler's Comments

1983 Amendment — Applicability: Substituted reference to state prison warden for reference to sheriff in two places.

Section 7, Ch. 411, L. 1983, provided: "This act applies to death sentences whether first pronounced before or after its effective date. The legislature intends this act to apply retroactively under 1-2-109." Effective on passage and approval, April 7, 1983.

Part 3

Commitment to Prison in Another State

46-19-301. Western Interstate Corrections Compact — contents. The Western Interstate Corrections Compact as contained herein is hereby enacted into law and entered into on behalf of this state with any and all other states legally joining therein in a form substantially as follows:

WESTERN INTERSTATE CORRECTIONS COMPACT

Article I. Purpose and Policy

The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently high quality for the confinement, treatment, and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on the basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this compact is to provide for the development and execution of such programs of cooperation for the confinement, treatment, and rehabilitation of offenders.

Article II. Definitions

As used in this compact, unless the context clearly requires otherwise:

(1) "state" means a state of the United States or, subject to the limitation contained in Article VII, Guam;

(2) "sending state" means a state party to this compact in which conviction was had;

(3) "receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction was had;

(4) "inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution;

(5) "institution" means any prison, reformatory, or other correctional facility (including but not limited to a facility for the mentally ill or mentally defective) in which inmates may lawfully be confined.

Article III. Contracts

(1) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

(a) its duration;

(b) payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs, or treatment not reasonably included as part of normal maintenance;

(c) participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom;

(d) delivery and retaking of inmates;

(e) such other matters as may be necessary and appropriate to fix the obligations, responsibilities, and rights of the sending and receiving states.

(2) Prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states may contract therewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific per centum of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any sending state so contracting may, to the extent that moneys are legally available therefor, pay to the receiving state a reasonable sum as consideration for such enlargement of capacity or provision of equipment or structures and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.

(3) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

Article IV. Procedures and Rights

(1) Whenever the duly constituted judicial or administrative authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in or transfer of an inmate to an institution within the territory of another party state is necessary in order to provide adequate quarters and care or desirable in order to provide an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(2) The appropriate officials of any state party to this compact shall have access at all reasonable times to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(3) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(4) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state in order that each inmate may have the benefit of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(5) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be cared for and treated equally with such similar inmates of

the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(6) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this subsection shall be borne by the sending state.

(7) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate and the sending and receiving states shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(8) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits, incur or be relieved of any obligations, or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(9) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

Article V. Acts Not Reviewable in Receiving State — Extradition

(1) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is suspected of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(2) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state

and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

Article VI. Federal Aid

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto, and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision, provided that, if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

Article VII. Entry into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two contiguous states from among the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. For the purposes of this article, Alaska and Hawaii shall be deemed contiguous to each other; to any and all of the states of California, Oregon, and Washington; and to Guam. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states or any other state contiguous to at least one party state upon similar action by such state. Guam may become party to this compact by taking action similar to that provided for joinder by any other eligible party state and upon the consent of congress to such joinder. For the purposes of this article, Guam shall be deemed contiguous to Alaska, Hawaii, California, Oregon, and Washington.

Article VIII. Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until 2 years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

Article IX. Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation, or treatment of inmates or to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

Article X. Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. 95-2308 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2308.

46-19-302. Effectuation of purposes of compact. The courts, departments, agencies, and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions, including but not limited to the making and submission of such reports as are required by the compact.

History: En. 95-2310 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2310.

46-19-303. Power of governor to enter into contracts. The governor is hereby empowered to designate the department of institutions to enter into such contracts recommended by the department on behalf of this state as may be appropriate to implement the participation of this state in the Western Interstate Corrections Compact pursuant to 46-19-301.

History: En. 95-2312 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2312; amd. Sec. 1, Ch. 59, L. 1979.

46-19-304. Commitment or transfer of inmate to institution outside of state. Any court or state agency having power to commit or transfer an inmate (as defined in Article II(4) of the Western Interstate Corrections Compact) to any institution for confinement may commit or transfer such inmate to any institution outside this state if this state has entered into a contract or contracts for the confinement of inmates in said institution pursuant to Article III of the Western Interstate Corrections Compact.

History: En. 95-2309 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2309.

46-19-305. Hearings requested by other states. The board of pardons and the department of institutions shall hold such hearings as may be requested by any other party state pursuant to Article IV(6) of the Western Interstate Corrections Compact.

History: En. 95-2311 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 95, Ch. 120, L. 1974; R.C.M. 1947, 95-2311.

CHAPTER 20

APPEALS

Part 1 — General Provisions

Section
46-20-101. Single method of review in criminal cases.
46-20-102. Suspension of the rules by supreme court.

46-20-103. Scope of appeal by state.
46-20-104. Scope of appeal by defendant.
46-20-105. Appeal by one codefendant.

Part 2 — Initiation of Appeal

46-20-201. Procedure on appeal — notice of appeal.
46-20-202. Names of parties.
46-20-203. Time for appeal from judgment.
46-20-204. Stay of execution and relief pending appeal.
46-20-205. Effect of an appeal by the state.

Part 3 — The Record on Appeal

46-20-301. Composition of the record on appeal.
46-20-302. Transcript of proceedings.
46-20-303. Indigent appeals.
46-20-304. Statement of the evidence or proceedings when no transcript available.
46-20-305. Agreed statement as the record on appeal.
46-20-306. Correction or modification of the record.
46-20-307 through 46-20-310 reserved.
46-20-311. Transmission of the record.
46-20-312. Extension of time for transmission of record.
46-20-313. Reduction of time for transmission of record.
46-20-314. Retention of record in district court by order of court.
46-20-315. Stipulation of parties that parts of record be retained.
46-20-316. Docketing the appeal.
46-20-317. Filing of the record.
46-20-318. Dismissal for failure to cause timely transmission — transmission at instance of respondent.
46-20-319. Effect of dismissal.

Part 4 — Briefs

46-20-401. Brief of the appellant.
46-20-402. Brief of the respondent.
46-20-403. Reply brief.
46-20-404. Brief of an amicus curiae — oral argument.
46-20-405. Filing and service of briefs.
46-20-406. References in briefs to parties.
46-20-407. References in briefs to the record.
46-20-408. Reproduction of statutes, rules, etc.
46-20-409. Length of briefs.
46-20-410. Appendix to brief.

Part 5 — Motions and Papers in General

46-20-501. Motions.
46-20-502. Filing and service of papers.
46-20-503. Computation of time.
46-20-504. Permission to take record and other papers from clerk's office.
46-20-505 through 46-20-510 reserved.
46-20-511. Printing format of documents.
46-20-512. Typewritten papers and motions.
46-20-513. First page and cover of papers.

Part 6 — Oral Argument

46-20-601. Calendar.
46-20-602. Time for oral argument.
46-20-603. Conduct of oral argument.
46-20-604. Failure to appear — submission on briefs.

Part 7 — Action by Court

46-20-701. Elements of record court considers on review.
46-20-702. Types of errors noticed on appeal.
46-20-703. Action reviewing court may take.
46-20-704. Entry and notice of orders and judgments.
46-20-705. Petitions for rehearing.
46-20-706. Termination of appeal — remand.
46-20-707. Discharge of defendant on reversal of judgment.

Chapter Cross-References

Procedure on appeal — Alcoholic Beverage Code, 16-6-202.

Part 1

General Provisions

46-20-101. Single method of review in criminal cases. (1) This chapter shall govern review in all criminal cases.

(2) All existing methods of review in criminal cases in the state are abolished. After January 1, 1968, the only method of review in criminal cases shall be by notice of appeal.

History: En. 95-2401 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2401.

46-20-102. Suspension of the rules by supreme court. In the interest of expediting decision upon any matter before it or for other good cause shown, the supreme court may suspend the requirements or provisions of these rules on application of a party or on its own motion and may order proceedings in accordance with its direction.

History: En. 95-2402 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2402.

46-20-103. Scope of appeal by state. (1) Except as otherwise specifically authorized, the state may not appeal in a criminal case.

(2) The state may appeal from any court order or judgment the substantive effect of which results in:

(a) dismissing a case;

(b) modifying or changing the verdict as provided in 46-16-702(3)(c);

(c) granting a new trial;

(d) quashing an arrest or search warrant;

(e) suppressing evidence;

(f) suppressing a confession or admission; or

(g) granting or denying change of venue.

History: En. 95-2403 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 41, Ch. 184, L. 1977; R.C.M. 1947, 95-2403.

Cross-References

Appeal by party other than state to District Court from Justices' or City Courts, 46-17-311.

46-20-104. Scope of appeal by defendant. (1) An appeal may be taken by the defendant only from a final judgment of conviction and orders after judgment which affect the substantial rights of the defendant.

(2) Upon appeal from a judgment, the court may review the verdict or decision and any alleged error objected to which involves the merits or necessarily affects the judgment. Failure to make a timely objection during trial constitutes a waiver of the objection except as provided in 46-20-702.

History: En. 95-2404 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2404; amd. Sec. 1, Ch. 319, L. 1983.

Compiler's Comments

1983 Amendment: In (2), substituted "alleged error" for "order or decision"; and inserted last sentence.

46-20-105. Appeal by one codefendant. When several defendants are tried jointly, any one or more of them may take an appeal but those who do not join in the appeal shall not be affected thereby.

History: En. 95-2429 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2429.

Part 2

Initiation of Appeal

Part Cross-References

Notice to Attorney General when department or board appeals, 46-1-302.

46-20-201. Procedure on appeal — notice of appeal. (1) An appeal shall be taken by filing a notice of appeal in the court in which the judgment or order appealed from is entered or filed.

(2) The notice of appeal shall specify the party or parties taking the appeal and shall designate the judgment or order appealed from.

(3) The clerk of the district court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant or, if a party is not represented by counsel, to the party at his last known address and shall mail a copy of the notice of appeal to the clerk of the supreme court. The clerk of the district court shall note on each copy served the date on which the notice of appeal was filed. If an appellant is represented by counsel, his counsel shall provide the clerk with sufficient copies of the notice of appeal to permit the clerk to comply with the requirements of this rule. Failure of the clerk to serve notice shall not affect the validity of the appeal. The notice shall be sufficient notwithstanding the death of a party or his counsel. The clerk shall note in the docket the names of the parties to whom he mails copies, with the date of mailing.

History: En. 95-2405 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2405(a) thru (c).

46-20-202. Names of parties. The party appealing shall be known as the appellant and the adverse party as the respondent, but the title of the case shall not be changed in consequence of the appeal.

History: En. 95-2405 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2405(d).

46-20-203. Time for appeal from judgment. An appeal from a judgment may be taken within 60 days after its rendition.

History: En. 95-2405 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2405(e).

46-20-204. Stay of execution and relief pending appeal. (1) If an appeal is taken, a sentence of death shall be stayed by order of the trial court until final order by the supreme court.

(2) If an appeal is taken and the defendant is admitted to bail, a sentence of imprisonment shall be stayed by the trial court.

(3) If an appeal is taken, a sentence to pay a fine or a fine and costs shall be stayed by the trial court or by the reviewing court.

(4) If an appeal is taken and the accused was admitted to probation, he shall remain on probation or post bail.

History: En. 95-2406 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2406.

46-20-205. Effect of an appeal by the state. An appeal taken by the state in no case stays or affects the operation of the judgment or order in favor of the defendant until judgment or order is reversed.

History: En. 95-2407 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2407.

Part 3

The Record on Appeal

46-20-301. Composition of the record on appeal. The original papers and exhibits filed in the district court, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the district court shall constitute the record on appeal in all cases.

History: En. 95-2408 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2408(a).

46-20-302. Transcript of proceedings. (1) Within 10 days after filing the notice of appeal, the appellant shall order in writing from the reporter a transcript of the entire lower court proceedings or such parts of the proceedings not already on file as he deems necessary for inclusion in the record. When ordering the transcript from the reporter, the appellant shall transmit a copy of the written order to the clerk of the supreme court.

(2) In all cases where the appellant intends to urge insufficiency of the evidence to support the verdict, order, or judgment in the district court, it shall be the duty of the appellant to order the entire transcript of the evidence. Wherever the sufficiency of the evidence to support a special verdict or answer by a jury to an interrogatory or to support a specific finding of fact by the trial court is to be raised on the appeal by the appellant, he shall be under a duty to include in the transcript all evidence relevant to such verdict, answer, or finding.

(3) Unless the entire transcript is to be included, the appellant shall within the time above provided file and serve on the respondent a description of the parts of the transcript which he intends to include in the record and a statement of the issues which he intends to present on the appeal. If the respondent deems a transcript of other parts of the proceedings to be necessary, he shall within 10 days after such filing and service order such parts from the reporter or procure an order from the district court requiring the appellant to so do.

(4) The cost of producing the transcript shall be paid by the appellant, or he shall make satisfactory arrangements with the reporter for the payment of

such cost. If the appellant considers that any part of the record designated by the respondent for inclusion is unnecessary for the determination of the issues presented, he shall advise the respondent. The district court may impose upon the respondent the cost of producing any part which it deems unnecessary for the determination of the issues.

(5) The reporter shall certify the correctness of the transcript.

History: En. 95-2408 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2408(b); amd. Sec. 1, Ch. 148, L. 1983.

Compiler's Comments

1983 Amendment: In first sentence of (1), provided that appellant's order be "in writing" and inserted reference to transcript of "the entire lower court proceedings"; and inserted second sentence of (1).

Cross-References

District Court reporter to give defendant transcript, 3-5-604.

46-20-303. Indigent appeals. (1) Upon imposition of any sentence in a criminal case, a defendant may file in the trial court a petition requesting that he be furnished with a transcript of the proceeding at his trial. The petition shall be verified by the petitioner and shall state facts showing that he is at the time of filing the petition without financial means to pay for the transcript. If the trial judge who imposed sentence or in his absence any judge of the court finds that the defendant is without financial means with which to obtain the transcript of the proceedings at his trial, he shall order the official court reporter to transcribe an original and copy of his notes of the proceedings at the trial. The original of the report of proceedings shall be filed with the clerk of the trial court, and the copy shall be delivered to the defendant without charge.

(2) If the petition provided for in subsection (1) is denied by the trial court, a petition so to proceed may be filed in the supreme court within 30 days after entry of the denial. The petition shall be accompanied by a copy of the verification filed in the trial court and a copy of the statement of reasons for denial given by the trial court.

History: En. 95-2428 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2428.

46-20-304. Statement of the evidence or proceedings when no transcript available. (1) If no report of the evidence or proceedings at a hearing or trial was made or if a transcript is unavailable, the appellant may, within 10 days from the hearing or trial or such time extended as the district court may for good cause shown permit, prepare a statement of the evidence or proceedings from the best available means, including his recollection. The statement shall be served on the respondent, who may serve objections or propose amendments thereto within 10 days after service.

(2) Thereupon, the statement and any objections or proposed amendments shall be submitted for settlement and approval to the district judge who handled the proceedings and, as settled and approved, shall be included by the clerk of the district court in the record on appeal. A judge may settle and approve such records after he ceases to be a judge. If such judge before the statement is settled and approved dies, is removed from office, becomes disqualified, is absent from the state, or refuses to settle and approve the statement, it shall be settled and approved in such manner as the supreme court may direct.

History: En. 95-2408 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2408(c).

46-20-305. Agreed statement as the record on appeal. In lieu of the record on appeal, as defined in 46-20-301, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the district court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issue presented. If the statement conforms to the truth, it, together with such additions as the court may consider necessary fully to present the issues raised by the appeal, shall be approved by the district court and shall then be certified to the supreme court as the record on appeal and transmitted thereto by the clerk of the district court within the time provided by 46-20-311 through 46-20-313. Copies of the agreed statement may be filed as the appendix required by 46-20-410.

History: En. 95-2408 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2408(d).

46-20-306. Correction or modification of the record. If any difference arises as to whether the record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation or the district court, either before or after the record is transmitted to the supreme court, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected and, if necessary, that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the supreme court.

History: En. 95-2408 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2408(e).

46-20-307 through 46-20-310 reserved.

46-20-311. Transmission of the record. (1) The record on appeal, including the transcript necessary for the determination of the appeal, shall be transmitted to the supreme court within 40 days after the filing of the notice of appeal unless the time is shortened or extended by an order entered under 46-20-312 or 46-20-313. Promptly after filing the notice of appeal, the appellant shall comply with the provisions of 46-20-302 and shall take any other action necessary to enable the clerk to assemble and transmit the record. If more than one appeal is filed, each appellant shall comply with the provisions of 46-20-302 and this subsection and a single record shall be transmitted within 40 days after the filing of the final notice of appeal.

(2) When the record is complete for purposes of the appeal, the clerk of the district court shall transmit it to the clerk of the supreme court. The clerk shall number the documents comprising the record and shall transmit with the record a numbered list of the documents, identifying each with reasonable definiteness. Documents in bulky containers and physical exhibits other than documents shall not be transmitted by the clerk unless he is directed to do so by a party or by the clerk of the supreme court. A party must make advance arrangements with the clerk of the district court for the transportation of bulky or weighty exhibits and with the clerk of the supreme court for their receipt. Transmission of the record is effected when the clerk of the district court mails or otherwise forwards the record to the supreme court. The

clerk of the district court shall indicate by endorsement on the face of the record or otherwise the date upon which it is transmitted to the supreme court.

History: **En. 95-2409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2409(a), (b).**

46-20-312. Extension of time for transmission of record. (1) The district court may extend the time for transmitting the record. The request for extension must be made within the time originally prescribed or within an extension previously granted, and the district court shall not extend the time to a day more than 90 days from the date of filing of the first notice of appeal.

(2) If the district court is without authority to grant the relief sought or has denied a request therefor, the supreme court may on motion extend the time for transmitting the record or may permit the record to be transmitted and filed after the expiration of the time allowed or fixed.

(3) A motion for an extension of time for transmitting the record made in either court shall show that the inability of the appellant to cause timely transmission of the record is due to causes beyond his control or to circumstances which may be deemed excusable neglect. If a request for an extension of time for transmitting the record has been previously denied, the motion shall set forth the denial and shall state the reasons therefor, if any were given.

History: **En. 95-2409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2409(part).**

46-20-313. Reduction of time for transmission of record. The district court or the supreme court may require the record to be transmitted and the appeal to be docketed at any time within the time otherwise fixed or allowed therefor.

History: **En. 95-2409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2409(part).**

46-20-314. Retention of record in district court by order of court. (1) The supreme court may provide by rule or order that a certified copy of the docket entries shall be transmitted in lieu of the entire record, subject to the right of any party to request at any time during the pendency of the appeal that designated parts of the record be transmitted.

(2) If the record is required in the district court for use there pending the appeal, the district court may make an order to that effect and the clerk of the district court shall retain the record and shall transmit a copy of the order and of the docket entries together with such parts as the parties may designate.

(3) If the record is retained in the district court by order of either court, the clerk of the district court shall retain it subject to the order of the supreme court and transmission of the copy of the docket entries shall constitute transmission of the record.

History: **En. 95-2409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2409(d).**

46-20-315. Stipulation of parties that parts of record be retained. The parties may agree by written stipulation filed in the district court that designated parts of the record shall be retained in the district court unless thereafter the supreme court shall order or any party shall request their transmittal. The parts thus designated shall nevertheless be a part of the record on appeal for all purposes.

History: **En. 95-2409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2409(e).**

46-20-316. Docketing the appeal. The clerk shall enter the appeal upon the docket at or before the time of filing the record. An appeal shall be docketed under the title given to the action in the district court with such addition as is necessary to indicate the identity of the appellant.

History: **En. 95-2410 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2410(a).**

46-20-317. Filing of the record. Upon receipt of the record by the clerk of the supreme court following its timely transmittal and after the appeal has been timely docketed, the clerk shall file the record without the necessity of a docketing fee. The clerk shall immediately give notice to all parties of the date on which the record was filed.

History: **En. 95-2410 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2410(b).**

46-20-318. Dismissal for failure to cause timely transmission — transmission at instance of respondent. (1) If the appellant fails to cause timely transmission of the record, any respondent may file a motion in the supreme court to dismiss the appeal. The motion must be supported by:

(a) a certificate of the clerk of the district court showing the date and substance of the judgment or order from which the appeal was taken, the date on which the notice of appeal was filed, and the expiration date of any order extending the time for transmitting the record; and

(b) proof that 7 days' notice in writing has been served on the appellant that application will be made for dismissal of the appeal.

(2) Instead of filing a motion to dismiss the appeal, the respondent may cause the record to be transmitted and may docket the appeal, in which event the appeal shall proceed as if the appellant had caused it to be docketed.

History: **En. 95-2410 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2410(c); amd. Sec. 24, Ch. 116, L. 1979.**

46-20-319. Effect of dismissal. The dismissal of an appeal is in effect an affirmance of the judgment or order appealed from unless the dismissal is expressly made without prejudice to another appeal.

History: **En. 95-2411 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2411.**

Part 4

Briefs

46-20-401. Brief of the appellant. The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(1) a table of contents with page references and a table of cases (alphabetically arranged), statutes, and other authorities cited with references to the pages of the brief where they are cited;

(2) a statement of the issues presented for review;

(3) a statement of the case, which shall first indicate briefly the nature of the case and its disposition in the court below;

(4) a statement of the facts relevant to the issues presented for review with references to the pages of the parts of the record at which material facts appear (see 46-20-407);

(5) an argument, which may be preceded by a summary and which shall contain the contentions of the appellant with respect to the issues presented and the reasons therefor, with citations to the authorities, statutes, and pages of the record relied on;

(6) a short conclusion stating the precise relief sought.

History: **En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(a).**

46-20-402. Brief of the respondent. The brief of the respondent shall conform to the requirements of subsections (1) through (5) of 46-20-401, except that a statement of the issues or of the case need not be made unless the respondent is dissatisfied with the statement of the appellant.

History: **En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(b).**

46-20-403. Reply brief. The appellant may file a brief in reply to the brief of the respondent. The reply brief must be confined to new matter raised in the brief of the respondent. No further briefs may be filed except with leave of court.

History: **En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(c).**

46-20-404. Brief of an amicus curiae — oral argument. A brief of an amicus curiae may be filed only if accompanied by written consent of all parties or by leave of court granted on motion. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. A motion of an amicus curiae for leave to participate in the oral argument will be granted only for extraordinary reasons.

History: **En. 95-2417 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2417.**

Cross-References

Brief of an amicus curiae, Rule 24, M.R.App.Civ.P. (see Title 25, ch. 21).

46-20-405. Filing and service of briefs. (1) The appellant shall serve and file his brief within 30 days after the date on which the record is filed. The respondent shall serve and file his brief within 30 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the respondent, but except for good cause shown, a reply brief must be served and filed at least 3 days before argument.

(2) Six copies of each brief shall be filed with the clerk of the supreme court unless otherwise ordered by the court, and one copy of each brief shall be served on counsel for each party separately represented. The clerk will not accept a brief for filing unless it is accompanied by acknowledgment or proof of service as required by 46-20-502.

(3) If an appellant fails to file his brief within the time provided by this section or within the time extended, a respondent may move for dismissal of the appeal. If a respondent fails to file his brief, he will not be heard at oral argument except by permission of the court.

History: **En. 95-2419 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2419.**

Compiler's Comments

Eight Copies of Briefs: As of June 1983, the Supreme Court required eight, rather than six, copies of each brief in most cases.

46-20-406. References in briefs to parties. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such formal designations as "appellant" and "respondent". It promotes clarity to use names or descriptive terms such as "accomplice", "decedent", etc.

History: En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(d).

46-20-407. References in briefs to the record. When a reference is made in the briefs to the record, the reference must be to particular parts of the record, suitably designated, and to specific pages of each part, e.g., Answer, p. 7; Motion for Suppression of Evidence, p. 3; Transcript, p. 231. Intelligible abbreviations may be used. If reference is made to an exhibit, reference shall be made to the pages of the transcript on which the exhibit was identified, offered, and received or rejected.

History: En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(e).

46-20-408. Reproduction of statutes, rules, etc. If determination of the issues presented requires the study of statutes, rules, etc., or relevant parts thereof, they may be reproduced in the brief or in an addendum at the end or they may be supplied to the court in pamphlet form. No such reproduction is required unless ordered by the supreme court.

History: En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(f).

46-20-409. Length of briefs. Except by permission of the court, briefs shall not exceed 50 pages of standard typographic printing or 70 pages of printing by any other process of duplicating or copying, exclusive of pages containing the table of contents, tables of citations, and any addendum containing statutes, rules, etc.

History: En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(g).

46-20-410. Appendix to brief. (1) At any time before final decision, the supreme court may order an appendix to any brief. Also, either the appellant or respondent may, if he deems it desirable, prepare, file, and serve with his brief an appendix.

(2) Unless otherwise ordered by the supreme court, an appendix shall contain:

(a) the relevant docket entries in the proceeding below;

(b) any relevant pleading and relevant portions of the charge, finding, and opinion;

(c) the judgment, order, or decision in question; and

(d) such other parts of the record as any party deems it essential for the judges of the court to read in order to decide the issues presented. In designating parts of the record for inclusion in the appendix, the parties shall have regard for the fact that the entire record is always available to the court for reference or examination and shall not engage in unnecessary designation.

(3) (a) At the beginning of the appendix there shall appear a chronological list of the parts of the record which it contains. Each part of the record shall be listed by the descriptive title given to that part by the reference made to it in the briefs. The page or pages of the appendix at which each part of the record thus listed appears shall be set out opposite each listing in a column at the right so as to permit immediate location in the appendix of the parts of the record referred to in the briefs and contained in the appendix.

(b) The relevant docket entries in the proceeding below shall follow the list of contents. Thereafter the parts of the record shall be set out in chronological order.

(4) The original paging of each part of the record set out in the appendix shall be indicated by placing in brackets the number of the original page at the place where the page begins. Omissions in the text of papers or of testimony must be indicated by asterisks. A question and its answer may be contained in a single paragraph.

(5) Exhibits may be contained in a separate volume suitably indexed.

History: En. 95-2418 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2418.

Cross-References

Agreed statement of the case as appendix, 46-20-305.

Part 5

Motions and Papers in General

46-20-501. Motions. (1) Unless another form is prescribed by this chapter, an application for an order or other relief shall be made by filing a motion in writing for such order or relief. The motion shall state with particularity the grounds therefor and shall set forth the order or relief sought.

(2) If a motion is supported by briefs, affidavits, or other papers, they shall be served and filed with the motion. At the time of filing a motion, counsel shall present a proposed order together with sufficient copies for service upon all counsel of record.

(3) Motions for procedural orders may be determined ex parte. The supreme court may authorize disposition of motions for procedural orders by a single judge.

(4) If a motion seeks dismissal of the appeal or other substantial relief, any party may file an answer in opposition within 7 days after service of the motion or within such time as the court may direct.

(5) Motions, supporting papers, and any response thereto may be typewritten.

History: En. 95-2415 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2415.

46-20-502. Filing and service of papers. (1) Papers required or permitted to be filed must be placed in the custody of the clerk within the time fixed for filing. Filing may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the papers are actually received within the time fixed for filing. If a motion requests relief which may be granted by a single judge, the judge may permit the motion to be filed with him in which event he shall note thereon the dates of filing and shall thereafter transmit it to the clerk.

(2) Copies of all papers, including any transcript, filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served by the party or person acting for him on all other parties to the appeal or review. Service on a party represented by counsel shall be made on counsel.

(3) Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(4) Papers presented for filing shall contain acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without acknowledgment of proof of service but shall require such to be filed promptly thereafter.

History: En. 95-2413 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2413.

Cross-References

Filing and service of briefs, 46-20-405.

46-20-503. Computation of time. (1) In computing any period of time prescribed by this chapter, by an order of court or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(2) Whenever a party is required or permitted to do any act within a prescribed period after service of a paper upon him and the paper is served by mail, 3 days shall be added to the prescribed period.

History: En. 95-2414 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2414.

Cross-References

Legal holidays, 1-1-216.

Computation of time, 1-1-306.

46-20-504. Permission to take record and other papers from clerk's office. The records and other papers of the supreme court shall not be taken therefrom except by counsel pursuant to a written order of a justice of the court, which order shall specify the time the same may be retained out of the clerk's office. The court or a justice thereof may require the same to be returned within a shorter period upon notice. The clerk shall preserve each order and counsel's receipt until the papers therein mentioned shall be returned.

History: En. 95-2424 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2424(c).

46-20-505 through 46-20-510 reserved.

46-20-511. Printing format of documents. (1) Briefs, appendices, and separate volumes of exhibits may be produced by standard typographic printing or by any duplicating or copying process capable of producing a clear black image on white paper. Typewritten copies of briefs, appendices, and separate volumes of exhibits may not be submitted without permission of the chief justice of the supreme court, except in behalf of parties allowed to proceed in forma pauperis. Pica solid is the smallest letter and the most compact form of composition allowed for all printed matter.

(2) Briefs, appendices, and separate volumes of exhibits shall be on white uncalendered book paper in book or booklet form. If produced by the standard typographic printing process, the pages shall be 10 inches long and 7

inches wide with a margin on the outer edge not less than 1 inch wide and on the inner edge not less than 2 inches wide. If produced by a duplicating or copying process, the pages shall be 11 inches long and 8 ½ inches wide with a margin on the outer edge not less than 1 inch wide and on the inner edge not less than 2 inches wide. The pages shall be fastened at the side and numbered at the top.

History: En. 95-2420 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2420(a).

46-20-512. Typewritten papers and motions. (1) Papers not required to be produced in a manner prescribed by 46-20-511 shall be plainly and legibly written by a typewriter with a new black ribbon and new black carbon paper of good grade in double spacing, except that quotations may be single spaced, on one side only of white typewriter paper 8 ½ inches wide and 13 inches long, numbered at the bottom, with a ruled margin of 1 ½ inches on the left-hand side of the page and 1 inch on the right-hand side and numbered lines, not more than 32 lines to the page. The pages shall be bound at the left-hand side into volumes not containing more than 250 pages. If the pages number 50 or less, they may be bound at the top.

(2) In collating typewritten papers the copies shall not be mixed, but each copy shall consist throughout of uniform pages. Each page of every copy shall be opaque and each line of print thereon plainly legible. The difficulty of examining transparent, illegible, and nonuniform typewritten copies has become so great that this section will be strictly applied and papers not complying with it will not be received.

History: En. 95-2420 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2420(b).

46-20-513. First page and cover of papers. All papers shall be bound in cardboard or pasteboard covers unless bound at the top under 46-20-512, in which case they may be bound in cover paper. On the first page and cover of all papers must be stated the title of the supreme court; the title of the case as in the court below, adding to the words "plaintiff" and "defendant", the words "appellant" and "respondent" as the case may require; the names of counsel for appellant and respondent; the title of the papers, as "Appellant's Brief", "Appendix to Appellant's Brief", etc.; and the venue from which the appeal is taken.

History: En. 95-2420 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2420(c).

Part 6

Oral Argument

46-20-601. Calendar. (1) Thirty days after the appellant's brief has been filed, the cause shall be placed on the calendar as ready for oral argument.

(2) Causes against defendants held in custody will be set for argument by the court in advance of causes against defendants on bail unless for good cause the court shall otherwise order.

History: En. 95-2424 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2424(a), (b).

46-20-602. Time for oral argument. The clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the hearing must be made by motion filed reasonably in advance of the date fixed for hearing.

History: **En. 95-2421 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2421(a).**

46-20-603. Conduct of oral argument. (1) Upon oral argument of an appeal or original proceeding, 40 minutes will be allowed appellant or applicant and 30 minutes to respondent. If counsel is of the opinion that additional time is necessary for the adequate presentation of his argument, he may request such additional time as he deems necessary by motion filed reasonably in advance of the date fixed for hearing. A party is not obliged to use all of the time allowed, and the court may terminate the argument whenever in its judgment further argument is unnecessary.

(2) The appellant or applicant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case, and the closing argument shall be limited to rebuttal of respondent's argument. Counsel will not be permitted to read at length from briefs, records, or authorities.

(3) If physical exhibits other than documents are to be used at the hearing, counsel shall arrange to have them placed in the courtroom before the court convenes on the date of the hearing. After the hearing, counsel shall cause the exhibits to be removed from the courtroom unless the court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the clerk, they shall be destroyed or otherwise disposed of as the clerk shall think best.

History: **En. 95-2421 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2421(b), (c), (f).**

46-20-604. Failure to appear — submission on briefs. (1) If counsel for a party fails to appear to present argument, the court may hear argument on behalf of a party whose counsel is present and the case will be decided on the briefs and the argument heard. If no counsel appear for any party, the case will be decided on the briefs unless the court shall otherwise order.

(2) By agreement of the parties, a case may be submitted for decision on the briefs, but the court may direct that the case be argued.

History: **En. 95-2421 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2421(d), (e).**

Part 7

Action by Court

46-20-701. Elements of record court considers on review. Whenever the record on appeal shall contain any order, ruling, or proceeding of the trial court against the respondent affecting his substantial rights on the appeal of said cause, together with any required objection of such respondent, the supreme court on such appeal shall consider such orders, rulings, or proceedings and the objections thereto and shall reverse or affirm the cause on said appeal according to the substantial rights of the respective parties, as shown upon the record. No cause shall be reversed by reason of any error committed by the trial court against the appellant unless the record shows that the error was prejudicial.

History: **En. 95-2412 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2412.**

46-20-702. Types of errors noticed on appeal. Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. No claim alleging an error affecting jurisdictional or constitutional rights may be noticed on appeal, if the alleged error was not objected to as provided in 46-20-104, unless the defendant establishes that the error was prejudicial as to his guilt or punishment and that:

(1) the right asserted in the claim did not exist at the time of the trial and has been determined to be retroactive in its application;

(2) the prosecutor, the judge, or a law enforcement agency suppressed evidence from the defendant or his attorney that prevented the claim from being raised and disposed of; or

(3) material and controlling facts upon which the claim is predicated were not known to the defendant or his attorney and could not have been ascertained by the exercise of reasonable diligence.

History: En. 95-2425 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2425; amd. Sec. 2, Ch. 319, L. 1983.

Compiler's Comments

1983 Amendment: Substituted last sentence and (1), (2), and (3) for former sentence, which read: "Defects affecting jurisdictional or constitutional rights may be noticed although they were not brought to the attention of the trial court."

46-20-703. Action reviewing court may take. On appeal the reviewing court may:

(1) reverse, affirm, or modify the judgment or order from which the appeal is taken;

(2) set aside, affirm, or modify any or all of the proceedings subsequent to or dependent upon the judgment or order from which the appeal is taken;

(3) reduce the offense of which the appellant was convicted to a lesser included offense;

(4) reduce the punishment imposed by the trial court; or

(5) order a new trial if justice so requires.

History: En. 95-2426 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 42, Ch. 184, L. 1977; R.C.M. 1947, 95-2426.

46-20-704. Entry and notice of orders and judgments. The notation of a judgment or order in the docket constitutes entry thereof. Upon entry of a judgment or order, the clerk shall promptly mail to all parties a copy of the judgment or order and notice of the date of entry thereof.

History: En. 95-2422 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2422.

46-20-705. Petitions for rehearing. (1) A petition for rehearing may be filed within 10 days after the decision of the supreme court has been rendered unless the time is shortened or enlarged by order. The adverse party shall have 7 days thereafter in which to serve and file his objections thereto. Extensions of time will be granted only upon showing of unusual merit and in no event in excess of 10 days.

(2) A petition for rehearing may be presented upon the following grounds and no others:

(a) that some facts material to the decision or some question decisive of the case submitted by counsel was overlooked by the court; or

(b) that the decision is in conflict with an express statute or controlling decision to which the attention of the court was not directed.

(3) Oral argument in support of the petition will not be permitted. Six copies of the petition, produced in accordance with part 5 of this chapter, shall be filed with the clerk.

History: En. 95-2423 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2423; amd. Sec. 1, Ch. 294, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "No reply to a petition for rehearing will be received unless requested by the court, but a petition for rehearing will ordinarily not be granted in the absence of such a request." from (3).

46-20-706. Termination of appeal — remand. (1) Upon termination of the appeal, the supreme court shall remand the cause with proper instruction together with the opinion of the court. The clerk shall return all original documents to the trial court.

(2) After the cause has been remanded to the trial court, the appellate court has no further jurisdiction of the appeal or the proceedings thereon and all orders necessary to carry the judgment into effect must be made by the court to which the cause is remanded.

History: En. 95-2427 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2427.

46-20-707. Discharge of defendant on reversal of judgment. If a judgment against the defendant is reversed without ordering a new trial, the appellate court must:

(1) if he is in custody, direct him to be discharged therefrom;

(2) if he is on bail, direct that his bail be exonerated; or

(3) if money was deposited instead of bail, direct that it be refunded to the defendant.

History: En. 95-2430 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2430.

CHAPTER 21

POSTCONVICTION HEARING

Part 1 — Initiating Proceedings

Section

46-21-101. Circumstances in which validity of sentence may be challenged.
46-21-102. When petition may be filed.
46-21-103. Commencement of proceedings.
46-21-104. Contents of petition.
46-21-105. What grounds for relief waived if not raised.

Part 2 — Action of Court

46-21-201. Proceedings on the petition.
46-21-202. Record must be kept.
46-21-203. Review.

Part 1

Initiating Proceedings

46-21-101. Circumstances in which validity of sentence may be challenged. A person adjudged guilty of an offense in a court of record who has no adequate remedy of appeal and who claims that sentence was imposed in violation of the constitution or the laws of this state or the constitution of the United States, that the court was without jurisdiction to impose the sentence, that a suspended or deferred sentence was improperly revoked, or that the sentence was in excess of the maximum authorized by law or is otherwise subject to collateral attack upon any ground of alleged error available under a writ of habeas corpus, writ of coram nobis, or other common law or statutory remedy may petition the court which imposed the sentence or the supreme court to vacate, set aside, or correct the sentence or revocation order.

History: En. 95-2601 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 43, Ch. 184, L. 1977; R.C.M. 1947, 95-2601; amd. Sec. 1, Ch. 195, L. 1981; amd. Sec. 1, Ch. 211, L. 1985.

Compiler's Comments

1985 Amendment: Near middle inserted "that a suspended or deferred sentence was improperly revoked"; and at end inserted "or revocation order".

1981 Amendment: Deleted "or any justice of the supreme court" following "the supreme court" near the end of the section.

46-21-102. When petition may be filed. A petition for such relief may be filed at any time within 5 years of the date of the conviction.

History: En. 95-2604 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 44, Ch. 184, L. 1977; R.C.M. 1947, 95-2604; amd. Sec. 2, Ch. 195, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "within 5 years of the date of the" for "after".

46-21-103. Commencement of proceedings. The proceeding shall be commenced by filing with the clerk of the court in which the conviction took place or the clerk of the supreme court a verified petition. The clerk shall docket the petition upon its receipt and bring the same promptly to the attention of the court.

History: En. 95-2602 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2602.

46-21-104. Contents of petition. The petition shall identify the proceeding in which the petitioner was convicted, give date of the rendition of the final judgment complained of, and clearly set forth the alleged violation or violations. The petition shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached. They shall identify any previous proceedings that the petitioner may have taken to secure relief from his conviction. The petition must be accompanied by a supporting memorandum including appropriate arguments and citations and discussion of authorities.

History: En. 95-2603 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2603; amd. Sec. 3, Ch. 195, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "Arguments" and inserted "The petition must be accompanied by a supporting memorandum including appropriate arguments" at the beginning of the last sentence; deleted "shall be omitted from this petition" following "discussion of authorities" at the end of the last sentence.

46-21-105. What grounds for relief waived if not raised. All grounds for relief claimed by a petitioner under this chapter must be raised in his original or amended petition. Any grounds not so raised are waived unless the court on hearing a subsequent petition finds grounds for relief asserted therein which could not reasonably have been raised in the original or amended petition. When a petitioner has been afforded a direct appeal of his conviction, grounds for relief that could reasonably have been raised on direct appeal may not be raised in his original or amended petition.

History: En. 95-2607 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2607; amd. Sec. 4, Ch. 195, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "other than constitutional grounds" following "Any grounds" in the second sentence; added the last sentence referring to direct appeal grounds.

Part 2

Action of Court

46-21-201. Proceedings on the petition. (1) Unless the petition and the files and records of the case conclusively show that the petitioner is entitled to no relief, the court shall cause notice thereof to be served upon the county attorney in the county in which the conviction took place and the attorney general and order them to file a responsive pleading to the petition. Following its review of the responsive pleading, the court may dismiss the petition as a matter of law for failure to state a claim for relief or it may grant a prompt hearing thereon, determine the issue, and make findings of fact and conclusions with respect thereto.

(2) The court may receive proof by affidavits, depositions, oral testimony, or other evidence. In its discretion the court may order the petitioner brought before the court for the hearing.

(3) If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and such supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the court finds for the state, the petitioner shall be returned to the custody of the person to whom the writ was directed.

History: En. 95-2605 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 45, Ch. 184, L. 1977; R.C.M. 1947, 95-2605; amd. Sec. 5, Ch. 195, L. 1981.

Compiler's Comments

1981 Amendment: Following "conviction took place", added the material relating to the attorney general and the responsive pleading ending with "state a claim for relief or it may".

46-21-202. Record must be kept. A court which entertains a petition pursuant to this chapter must keep a record of the proceedings and enter its findings and conclusions.

History: En. 95-2606 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 46, Ch. 184, L. 1977; R.C.M. 1947, 95-2606.

46-21-203. Review. Either the petitioner or the state may appeal to the supreme court of Montana from an order entered on the petition. The appeal must be taken within 60 days of the entry of the order.

History: En. 95-2608 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 47, Ch. 184, L. 1977; R.C.M. 1947, 95-2608; amd. Sec. 6, Ch. 195, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "60 days of" for "6 months from".

CHAPTER 22

HABEAS CORPUS

Part 1 — Availability of Writ

Section
46-22-101. Who may prosecute writ.
46-22-102. No release for technical defects.
46-22-103. Writ for purpose of bail.

Part 2 — Issuance of Writ

46-22-201. Application for writ.
46-22-202. By whom issued and before whom returnable.
46-22-203. Writ granted without delay.
46-22-204. Writ and process may issue at any time.
46-22-205. Contents of writ.
46-22-206. Service of writ.

Part 3 — Return of Writ, Hearing, Appeal

46-22-301. Contents of return.
46-22-302. Production of person — exception for infirmity or illness.
46-22-303. Refusal to obey writ — contempt.
46-22-304. Hearing on return.
46-22-305. Production of evidence — depositions.
46-22-306. Disposition of petitioner.
46-22-307. Appeal by state.

Chapter Cross-References

Right of habeas corpus, Art. II, sec. 19, Mont. Const.

Part 1

Availability of Writ

46-22-101. Who may prosecute writ. (1) Except as provided in subsection (2), every person imprisoned or otherwise restrained of his liberty within this state may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint and, if illegal, to be delivered therefrom.

(2) Relief under this chapter is not available to attack the validity of the conviction or sentence of a person who has been adjudged guilty of an offense in a court of record and has exhausted his remedy of appeal; nor is relief under this chapter available to attack the legality of an order revoking a suspended or deferred sentence. Relief for such purposes is limited to the provisions of Title 46, chapter 21.

History: En. 95-2701 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2701; amd. Sec. 7, Ch. 195, L. 1981; amd. Sec. 2, Ch. 211, L. 1985.

Compiler's Comments

1985 Amendment: In (2) near beginning of first sentence, after "conviction", inserted "or sentence" and at end of first sentence inserted "nor is relief under this chapter available to attack the legality of an order revoking a suspended or deferred sentence".

1981 Amendment: Inserted "Except as provided in subsection (2)" in (1); added subsection (2).

46-22-102. No release for technical defects. A person may not be released on a writ of habeas corpus due to any technical defect in commitment not affecting his substantial rights.

History: En. 95-2716 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2716.

46-22-103. Writ for purpose of bail. When a person is imprisoned or detained in custody on any criminal charge for want of bail, such person is entitled to a writ of habeas corpus for the purpose of giving bail upon averring that fact in his petition, without alleging that he is illegally confined.

History: En. 95-2702 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2702.

Part 2

Issuance of Writ

46-22-201. Application for writ. (1) Application for the writ is made by petition signed either by the party for whose relief it is intended or by some person in his behalf. It must specify:

(a) that the person in whose behalf the writ is applied for is unlawfully imprisoned or restrained of his liberty;

(b) why the imprisonment or restraint is unlawful;

(c) the place where and the officer or person by whom he is so confined or restrained.

(2) All the parties must be named if they are known or described if they are not known.

(3) The petition must be verified by the oath or affirmation of the party making the application.

History: En. 95-2703 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2703; amd. Sec. 25, Ch. 116, L. 1979.

46-22-202. By whom issued and before whom returnable. The writ of habeas corpus may be granted:

(1) by the supreme court or any justice thereof upon petition by or on behalf of any person restrained of his liberty in this state. When so issued it may be made returnable before the court or any justice thereof or before any district court or judge thereof.

(2) by a district court or a judge thereof upon petition by or on behalf of any person restrained of his liberty in the court's or judge's respective district or county.

History: En. 95-2704 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2704; amd. Sec. 26, Ch. 116, L. 1979.

Cross-References

Individual power of Supreme Court Justices to issue Writs of Habeas Corpus, 3-2-212.

District Court may issue and determine at chambers, 3-5-311, 3-5-312.

46-22-203. Writ granted without delay. Any court or judge authorized to grant the writ to whom a petition therefor is presented must, if it appears that the writ ought to issue, grant the same without delay.

History: En. 95-2705 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2705.

46-22-204. Writ and process may issue at any time. Any writ or process authorized by this chapter may be issued and served on any day or at any time.

History: En. 95-2715 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2715.

Cross-References

Court actions permitted on nonjudicial days, 3-1-302.

46-22-205. Contents of writ. (1) The writ must be directed to the person having custody of or restraining the person on whose behalf the application is made and must command him to have the body of such person before the court or judge before whom the writ is returnable at a time and place therein specified.

(2) The issue or issues to be determined upon return of the writ may be stated either in the writ or in an order attached to the writ. If the issue or issues to be determined upon return of the writ are not stated therein or in an order attached thereto, then a copy of the petition must be attached to the writ.

History: En. 95-2707 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2707.

46-22-206. Service of writ. (1) The writ must be served upon the person to whom it is directed. If the person to whom the writ is directed represents a state institution, a copy of the writ shall be served upon the attorney general. If such person represents a county institution, a copy of the writ shall be served upon the county attorney.

(2) The writ shall be served by the clerk of court, the sheriff, or any other officer directed to do so by the court.

(3) The writ shall be served in the same manner as a summons in civil actions, except when otherwise expressly directed by the court or judge.

History: En. 95-2708 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2708.

Cross-References

Procedure for service of summons and writ, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Part 3

Return of Writ, Hearing, Appeal

46-22-301. Contents of return. (1) The person upon whom the writ is served must make a return and state in his return:

(a) whether he has the party in his custody or under his power or restraint;

(b) if he has the party in his custody or under his power or restraint, the authority for and cause of such custody or restraint; if the detention is by legal process, a copy thereof must be annexed to the response;

(c) if he had the party in his custody or under his power or restraint at any time prior or subsequent to the date of the writ but has transferred such custody or restraint to another, particularly to whom, at what time and place, for what cause, and by what authority such transfer took place.

(2) The return must be signed by the person making the same and, except when such person is a sworn public officer and makes such return in his official capacity, it must be verified by his oath.

History: **En. 95-2709 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2709.**

46-22-302. Production of person — exception for infirmity or illness. The person commanded by the writ shall bring the detained person according to the command of the writ unless it is made to appear by affidavit that because of sickness or infirmity such person cannot be brought before the judge without danger to his health. If the judge is satisfied with the truth of the affidavit, he may proceed and dispose of the case as if the party had been produced or the hearing may be postponed until the party can be present.

History: **En. 95-2710 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2710.**

46-22-303. Refusal to obey writ — contempt. If the person commanded by the writ refuses to obey, he shall be adjudged in contempt of court.

History: **En. 95-2706 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2706.**

46-22-304. Hearing on return. (1) The court or judge before whom the writ is returned must immediately after the return proceed to hear and examine the return.

(2) The hearing on the writ may be summary in nature.

History: **En. 95-2711 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2711.**

46-22-305. Production of evidence — depositions. Evidence may be produced and compelled as in civil actions. Depositions taken in accordance with the Montana Rules of Civil Procedure may be read as evidence at the hearing on the writ.

History: **En. 95-2712 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2712.**

Cross-References

Procedure for acquiring evidence, Rules 26, 28 through 37, M.R.Civ.P. (see Title 25, ch. 20).

46-22-306. Disposition of petitioner. If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceeding and such supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the court finds for the state, the petitioner shall be returned to the custody of the person to whom the writ was directed.

History: **En. 95-2713 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2713.**

46-22-307. Appeal by state. An appeal may be taken to the supreme court by the state from an order of judgment discharging the petitioner. The court may admit the petitioner to bail pending appeal. The appeal shall be taken in the same manner as in civil actions.

History: **En. 95-2714 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2714.**

Cross-References

Procedure for appeal to Supreme Court, Title 25, ch. 12; Rule 72, M.R.Civ.P. (see Title 25, ch. 20).

CHAPTER 23

PROBATION, PAROLE, AND CLEMENCY

Part 1 — General Provisions—Board of Pardons

Section
46-23-101. Short title.
46-23-102. Cases of juveniles excluded.
46-23-103. Definitions.
46-23-104. Board of pardons.
46-23-105. Legal adviser.
46-23-106. Information from courts to board.
46-23-107. Orders of board — reviewability.
46-23-108. Records and reports — confidentiality.

Part 2 — Granting of Parole

46-23-201. Prisoners eligible for parole.
46-23-202. Investigation of prisoner by board.
46-23-203. Information from prison officials.
46-23-204. All persons may be heard — counsel.
46-23-205. Subpoenas — issuance, service.
46-23-206. Enforcement of subpoenas by court.
46-23-207. Penalty for disobedience.
46-23-208 through 46-23-214 reserved.
46-23-215. Conditions of parole.
46-23-216. Duration of parole.
46-23-217. Service of term for additional crime.
46-23-218. Authority of board to adopt rules.

Part 3 — Executive Clemency

46-23-301. Cases of executive clemency — approval of board.
46-23-302. Order for hearing on application for executive clemency.
46-23-303. Publication of order.
46-23-304. Proof of publication.
46-23-305. When publication not necessary.
46-23-306. Record of hearing.
46-23-307. Decision of board.
46-23-308 through 46-23-314 reserved.
46-23-315. Authority of governor to grant respite.
46-23-316. Governor's report to legislature.

Part 4 — Supervised Release Program

46-23-401. Definitions.
46-23-402 through 46-23-404. Repealed.
46-23-405. Establishing program — rules.
46-23-406. Repealed.
46-23-407 through 46-23-410 reserved.
46-23-411. Application to participate — eligibility.
46-23-412. Board's action on application.
46-23-413 through 46-23-415. Repealed.
46-23-416 through 46-23-420 reserved.
46-23-421. Responsibility of department and supervising agent.
46-23-422. Violation of supervised release program by prisoner — revocation.
46-23-423 through 46-23-425. Repealed.
46-23-426. Escape.

Parts 5 through 9 reserved

Part 10 — Supervision of Probationers and Parolees

46-23-1001. Definitions.

46-23-1002. Powers of the department.
46-23-1003. Qualifications of probation and parole officers.
46-23-1004. Duties of the department.
46-23-1005 through 46-23-1010 reserved.
46-23-1011. Supervision on probation.
46-23-1012. Arrest when violations of probation alleged.
46-23-1013. Action of court after arrest.
46-23-1014. When probationer considered a fugitive.
46-23-1015 through 46-23-1020 reserved.
46-23-1021. Supervision on parole.
46-23-1022. Parole services.
46-23-1023. Arrest of alleged parole violator.
46-23-1024. Initial hearing after arrest.
46-23-1025. Report to and action by the board.
46-23-1026. When prisoner considered a fugitive.

Part 11 — Interstate Supervision of Probation and Parole

46-23-1101. Short title.
46-23-1102. Authority of governor to make interstate compact regarding probation and parole — terms.
46-23-1103. Arranging for sending state to retake or reincarcerate violator.
46-23-1104. Hearing officers — who eligible.
46-23-1105. Rights of parolee or probationer regarding hearing.
46-23-1106. Hearing in another state — record, effect.

Chapter Cross-References

Effect of executive reorganization, 2-15-131 through 2-15-137.

Jail work release program, Title 46, ch. 18, part 7.

Part 1

General Provisions — Board of Pardons

46-23-101. Short title. Parts 1, 2, 3, and 10 of this chapter shall be known and may be cited as the "Parole and Executive Clemency Act".

History: En. Sec. 1, Ch. 153, L. 1955; Sec. 94-9821, R.C.M. 1947; redes. 95-3203 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 2, Ch. 333, L. 1975; R.C.M. 1947, 95-3203.

46-23-102. Cases of juveniles excluded. The provisions of parts 1, 2, 3, and 10 of this chapter shall not apply to probation in the juvenile courts or to parole from state institutions for juveniles.

History: En. Sec. 30, Ch. 153, L. 1955; Sec. 94-9850, R.C.M. 1947; redes. 95-3232 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3232.

46-23-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of pardons provided for in 2-15-2302.

(2) "Department" means the department of institutions provided for in Title 2, chapter 15, part 23.

(3) "Executive clemency" refers to the powers of the governor as provided by section 12 of Article VI of the constitution of Montana.

(4) "Parole" means the release to the community of a prisoner by the decision of the board prior to the expiration of his term, subject to conditions

imposed by the board and subject to supervision of the department of institutions.

History: En. Sec. 3, Ch. 153, L. 1955; Sec. 94-9823, R.C.M. 1947; amd. Sec. 1, Ch. 73, L. 1973; redes. 95-3205 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 82, Ch. 120, L. 1974; amd. Sec. 5, Ch. 333, L. 1975; R.C.M. 1947, 95-3205.

46-23-104. Board of pardons. (1) The board of pardons is responsible for executive clemency and parole as provided in this chapter.

(2) The board shall meet at least twice each month at the state prison.

(3) The principal office of the board shall be in Deer Lodge.

(4) The board may designate one of its members, one of its staff members, or any other adult correctional releasing authority to conduct interviews relative to:

(a) parole eligibility;

(b) plans for release on parole; or

(c) revocation hearings.

History: En. Sec. 2, Ch. 153, L. 1955; Sec. 94-9822, R.C.M. 1947; redes. 95-3204 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 81, Ch. 120, L. 1974; amd. Sec. 3, Ch. 333, L. 1975; R.C.M. 1947, 95-3204; amd. Sec. 1, Ch. 234, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (4).

Cross-References

Board of Pardons established, 2-15-2302.

46-23-105. Legal adviser. The board may appoint any qualified attorney or the attorney general to act as its legal adviser and represent it in all proceedings whenever so requested by the board.

History: En. Sec. 7, Ch. 153, L. 1955; Sec. 94-9827, R.C.M. 1947; redes. 95-3209 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3209.

46-23-106. Information from courts to board. It shall be the duty of the court disposing of any criminal case to cause to be transmitted to the board of pardons statistical data in accordance with regulations issued by the board regarding all dispositions of defendants whether found guilty or discharged.

History: En. 95-2210 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2210.

46-23-107. Orders of board — reviewability. Decisions of the board shall be by majority vote. The orders of the board are not reviewable except as to compliance with the terms of parts 1, 2, 3, and 10 of this chapter.

History: En. Sec. 4, Ch. 153, L. 1955; amd. Sec. 42, Ch. 93, L. 1969; Sec. 94-9824, R.C.M. 1947; redes. 95-3206 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 83, Ch. 120, L. 1974; amd. Sec. 6, Ch. 333, L. 1975; amd. Sec. 59, Ch. 184, L. 1977; R.C.M. 1947, 95-3206(1).

46-23-108. Records and reports — confidentiality. The department shall keep a record of the board's acts and decisions available to the public. However, all social records, including the presentence report, the preparole report, and the supervision history obtained in the discharge of official duty by the department, are confidential and may not be disclosed directly or indirectly to anyone other than the members of the board or a judge. The board or a court may, in its discretion, when the best interests or welfare of a particular defendant or prisoner makes such action desirable or helpful, permit the inspection of the social record or any parts thereof by the prisoner or his attorney.

History: En. Sec. 4, Ch. 153, L. 1955; amd. Sec. 42, Ch. 93, L. 1969; Sec. 94-9824, R.C.M. 1947; redes. 95-3206 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 83, Ch. 120, L. 1974; amd. Sec.

6, Ch. 333, L. 1975; amd. Sec. 59, Ch. 184, L. 1977; R.C.M. 1947, 95-3206(2); amd. Sec. 27, Ch. 116, L. 1979.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Criminal justice information, Title 44, ch. 5.

Disclosure of criminal justice information, 44-5-104.

Part 2

Granting of Parole

46-23-201. Prisoners eligible for parole. (1) Subject to the following restrictions, the board shall release on parole by appropriate order any person confined in the Montana state prison or the women's correction center, except persons under sentence of death and persons serving sentences imposed under 46-18-202(2), when in its opinion there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community:

(a) No convict serving a time sentence may be paroled until he has served at least one-half of his full term, less the good time allowance provided for in 53-30-105; except that a convict designated as a nondangerous offender under 46-18-404 may be paroled after he has served one-quarter of his full term, less the good time allowance provided for in 53-30-105. Any offender serving a time sentence may be paroled after he has served, upon his term of sentence, 17 ½ years.

(b) No convict serving a life sentence may be paroled until he has served 30 years, less the good time allowance provided for in 53-30-105.

(2) A parole shall be ordered only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner shall be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen.

(3) If the department of institutions certifies to the board that the population at the Montana state prison exceeds its design capacity of 744 by 96 inmates or that the population at the women's correction center exceeds its design capacity of 35 inmates and that the prison or the center has exceeded its capacity for a period of more than 30 days, the board shall consider convicts in the institution in which the design capacity has been exceeded eligible for parole 120 days prior to the eligibility date provided for in subsection (1).

(4) Regardless of length of sentence, if the conditions of parole eligibility are met within the initial 12 months of incarceration at Montana state prison, the provisions of subsection (3) do not apply.

History: En. Sec. 12, Ch. 153, L. 1955; Sec. 94-9832, R.C.M. 1947; redes. 95-3214 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 86, Ch. 120, L. 1974; amd. Sec. 3, Ch. 312, L. 1975; amd. Sec. 60, Ch. 184, L. 1977; amd. Sec. 3, Ch. 340, L. 1977; amd. Sec. 3, Ch. 580, L. 1977; R.C.M. 1947, 95-3214(1), (2); amd. Secs. 1, 2, Ch. 235, L. 1983; amd. Sec. 1, Ch. 451, L. 1985.

Compiler's Comments

1985 Amendment — Effective Date: In (3) increased design capacity of prison from 545 to 744 and reduced inmates in excess of capacity from 215 to 96.

Section 3(2), Ch. 451, L. 1985, provided that sec. 1 (1985 amendment to this section) is effective 30 days after the Governor declares by executive order that the prison housing units funded in HB 833 of the 48th Legislature are occupied.

1983 Amendment: In first paragraph of (1), inserted "or the women's correction center" and substituted "the prisoner" for "himself" near the end; and inserted (3) and (4), which were scheduled to terminate July 1, 1985, under sec. 2, Ch.

235, L. 1983. Section 2, Ch. 451, L. 1985, effective on passage and approval [approved April 12, 1985], repealed sec. 2, Ch. 235, L. 1983, which would have terminated (3) and (4).

46-23-202. Investigation of prisoner by board. (1) Within the 2 months prior to his official parole eligibility date, the board shall consider all pertinent information regarding each prisoner, including the circumstances of his offense, his previous social history and criminal record, his conduct, employment, and attitude in prison, and the reports of any physical and mental examinations which have been made.

(2) Before ordering the parole of any prisoner the board shall interview him.

History: En. Sec. 12, Ch. 153, L. 1955; Sec. 94-9832, R.C.M. 1947; redes. 95-3214 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 86, Ch. 120, L. 1974; amd. Sec. 3, Ch. 312, L. 1975; amd. Sec. 60, Ch. 184, L. 1977; amd. Sec. 3, Ch. 340, L. 1977; amd. Sec. 3, Ch. 580, L. 1977; R.C.M. 1947, 95-3214(3); amd. Sec. 1, Ch. 45, L. 1983.

Compiler's Comments

1983 Amendment: In (1), changed Board of Pardons consideration from 2 months after admission and at such intervals thereafter as the board determined to 2 months prior to official parole eligibility date.

46-23-203. Information from prison officials. It shall be the duty of all prison officials to grant to the members of the board or its properly accredited representatives access at all reasonable times to any prisoner over whom the board has jurisdiction under parts 1, 2, 3, and 10 of this chapter, to provide for the board or such representatives facilities for communicating with and observing such prisoner, and to furnish to the board such reports as the board shall require concerning the conduct and character of any prisoner in their custody and any other facts deemed by the board pertinent in determining whether such prisoner shall be paroled.

History: En. Sec. 14, Ch. 153, L. 1955; Sec. 94-9834, R.C.M. 1947; redes. 95-3216 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3216.

46-23-204. All persons may be heard — counsel. The board shall be required to hear oral statements from all persons desiring to be heard before the board, and any person may be represented by counsel, provided that the board shall have the power to regulate procedure at all hearings.

History: En. Sec. 15, Ch. 153, L. 1955; Sec. 94-9835, R.C.M. 1947; redes. 95-3217 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3217.

Cross-References

Duty of court to advise at initial appearance, 46-7-102.

Right to counsel, 46-8-101.

Court to advise defendant of rights, 46-12-202.

Right to counsel — sentencing hearing, 46-18-223.

Court to advise defendant of rights — extradition proceedings, 46-30-217.

46-23-205. Subpoenas — issuance, service. (1) The board shall have the power to issue subpoenas compelling the attendance of such witnesses and the production of such records, books, papers, and documents as it may deem necessary for investigation of the case of any person before it. Subpoenas may be signed and oaths administered by the board or any member thereof.

(2) Subpoenas so issued may be served by any sheriff, constable, police officer, parole and probation officer, or other law enforcement officer.

History: En. Sec. 16, Ch. 153, L. 1955; Sec. 94-9836, R.C.M. 1947; redes. 95-3218 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3218(part).

46-23-206. Enforcement of subpoenas by court. In case of contumacy by or refusal of any person to obey a subpoena issued to such person, any member of the board or duly authorized representative of any of them may make application to any court of record of this state and such court shall have jurisdiction to issue to such person an order requiring such person to appear before the board and there to produce evidence if so ordered or there to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by said court as a contempt thereof.

History: En. Sec. 16, Ch. 153, L. 1955; Sec. 94-9836, R.C.M. 1947; redes. 95-3218 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3218(part).

46-23-207. Penalty for disobedience. Any person who shall without just cause fail or refuse to attend and testify, to answer any lawful inquiry, or to produce records, books, papers, and other documents if it is in his power to do so in obedience to a subpoena of the board or any member thereof shall be punished by a fine of not more than $200 or by imprisonment for not longer than 60 days or by both such fine and imprisonment. Each day such violation continues shall be deemed to be a separate offense.

History: En. Sec. 16, Ch. 153, L. 1955; Sec. 94-9836, R.C.M. 1947; redes. 95-3218 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3218(part).

46-23-208 through 46-23-214 reserved.

46-23-215. Conditions of parole. (1) Every prisoner while on parole shall remain in the legal custody of the institution from which he was released but shall be subject to the orders of the board.

(2) When an order for parole is issued, it shall recite the conditions thereof.

(3) Whenever a prisoner in the Montana state prison has been approved for parole on condition that he obtain employment or secure suitable living arrangements or on any other condition that is difficult to fulfill while incarcerated, the warden may grant him a furlough, not to exceed 10 days, for purposes of fulfilling the condition. While on such furlough, the prisoner remains in the legal custody of the prison and is subject to all other conditions recited by the board.

History: En. Sec. 12, Ch. 153, L. 1955; Sec. 94-9832, R.C.M. 1947; redes. 95-3214 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 86, Ch. 120, L. 1974; amd. Sec. 3, Ch. 312, L. 1975; amd. Sec. 60, Ch. 184, L. 1977; amd. Sec. 3, Ch. 340, L. 1977; amd. Sec. 3, Ch. 580, L. 1977; R.C.M. 1947, 95-3214(4); amd. Sec. 1, Ch. 1, Sp. L. 1982.

Compiler's Comments

1982 Special Session Amendment: Added subsection (3).

46-23-216. Duration of parole. (1) A prisoner on parole who has served one-half of his term or terms, less the good time allowance, or a nondangerous offender on parole who has served one-quarter of his term or terms, less the good time allowance, is considered released on parole until the expiration of the maximum term or terms for which he was sentenced, less the good time allowance as provided for in 53-30-105.

(2) The period served on parole or conditional release shall be deemed service of the term of imprisonment, and subject to the provisions contained in 46-23-1023 through 46-23-1026 relating to a prisoner who is a fugitive from

or has fled from justice, the total time served may not exceed the maximum term or sentence. When a prisoner on parole or conditional release has performed the obligations of his release, the board shall make a final order or discharge and issue a certificate of discharge to the prisoner.

History: (1)En. Sec. 13, Ch. 153, L. 1955; Sec. 94-9833, R.C.M. 1947; redes. 95-3215 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 87, Ch. 120, L. 1974; amd. Sec. 4, Ch. 312, L. 1975; amd. Sec. 61, Ch. 184, L. 1977; amd. Sec. 4, Ch. 340, L. 1977; Sec. 95-3215, R.C.M. 1947, 95-3215; (2)En. Sec. 20, Ch. 153, L. 1955; Sec. 94-9840, R.C.M. 1947; redes. 95-3222 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3222, R.C.M. 1947; R.C.M. 1947, 95-3215, 95-3222.

Cross-References

Designation as nondangerous offender for purposes of parole eligibility, 46-18-404.

46-23-217. Service of term for additional crime. A prisoner who commits a crime while at large on parole or conditional release and who is convicted and sentenced therefor shall serve such sentence consecutively with the remainder of the original sentence as provided in 46-18-401.

History: En. Sec. 19, Ch. 153, L. 1955; Sec. 94-9839, R.C.M. 1947; redes. 95-3221 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3221; amd. Sec. 28, Ch. 116, L. 1979.

46-23-218. Authority of board to adopt rules. The board may adopt any other rules it considers proper or necessary with respect to the eligibility of prisoners for parole, the conduct of parole hearings, and conditions to be imposed upon parolees.

History: En. Sec. 12, Ch. 153, L. 1955; Sec. 94-9832, R.C.M. 1947; redes. 95-3214 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 86, Ch. 120, L. 1974; amd. Sec. 3, Ch. 312, L. 1975; amd. Sec. 60, Ch. 184, L. 1977; amd. Sec. 3, Ch. 340, L. 1977; amd. Sec. 3, Ch. 580, L. 1977; R.C.M. 1947, 95-3214(5).

Part 3

Executive Clemency

46-23-301. Cases of executive clemency — approval of board. The board shall investigate and report to the governor with respect to all cases of executive clemency. A majority of the board shall advise, investigate, and approve each such case before the action of the governor shall be final. All applications for executive clemency shall be made to the board, which shall cause an investigation to be made of all the circumstances surrounding the crime for which the applicant was convicted and as to the individual circumstances relating to social conditions of the applicant. If the board or a majority thereof approves such application for executive clemency, it shall advise the governor and recommend action to be taken.

History: En. Sec. 21, Ch. 153, L. 1955; Sec. 94-9841, R.C.M. 1947; amd. Sec. 2, Ch. 73, L. 1973; redes. 95-3223 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3223.

46-23-302. Order for hearing on application for executive clemency. After the board has duly considered an application for executive clemency and has by majority vote favored a recommendation of executive clemency to the governor, it must pass an order in substance as follows:

"Whereas, the Board of Pardons has officially received an application for executive clemency concerning ...., a convict confined in the state prison (or to one ...., who has been found guilty of an offense committed against the laws of the state), who was convicted of the crime of .... committed at ...., in the county of ...., State of Montana, on the .... day of ...., 19.., and sentenced for a term of .... years.

Therefore, be it ordered that ...., the .... day of ...., 19.., be set apart for the consideration of said executive clemency matter; and all persons having an interest therein desiring to be heard either for or against the granting of the pardon or reprieve, commutation, restoration of citizenship, remission or suspension of fine or forfeiture are hereby notified to be present at .... o'clock of said day, at .....

Further, ordered that a copy of this order be printed and published in the .... (here insert name of some newspaper of general circulation in the county where the crime was committed), a daily (or weekly) newspaper printed and published at ...., in the county of ...., once each week for 2 weeks beginning ...., 19.., and ending ....."

History: En. Sec. 22, Ch. 153, L. 1955; Sec. 94-9842, R.C.M. 1947; amd. Sec. 3, Ch. 73, L. 1973; redes. 95-3224 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3224.

46-23-303. Publication of order. The board must cause a copy of such order to be published in the newspaper therein designated at least once a week for 2 weeks prior to the hearing and, at the same time, cause to be deposited in the post office at the seat of government, postpaid, a copy of said order and notice addressed to the district judge, county attorney, and sheriff, respectively, of the county where the crime was committed and in like manner mail a copy of the order to the petitioner and the convict.

History: En. Sec. 23, Ch. 153, L. 1955; Sec. 94-9843, R.C.M. 1947; redes. 95-3225 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3225.

46-23-304. Proof of publication. Prior to the time set for hearing, proof of the publication of notice must be made by the publisher or managing agent.

History: En. Sec. 24, Ch. 153, L. 1955; Sec. 94-9844, R.C.M. 1947; redes. 95-3226 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3226.

46-23-305. When publication not necessary. No publication need be made as provided in 46-23-302, 46-23-303, and 46-23-304 in the following cases:

(1) when there is imminent danger of the death of the person convicted or imprisoned;

(2) when the term of imprisonment of the applicant is within 10 days of its expiration.

History: En. Sec. 26, Ch. 153, L. 1955; Sec. 94-9846, R.C.M. 1947; amd. and redes. 95-3228 by Sec. 28, Ch. 513, L. 1973; R.C.M. 1947, 95-3228.

46-23-306. Record of hearing. At the hearing the board must cause to be kept a record showing:

(1) the names of all persons appearing before the board on behalf of the person seeking clemency from the governor;

(2) the names of all persons appearing before the board in opposition to the granting of the same;

(3) the testimony of all persons giving evidence before the board;

(4) that the affidavit and return from the printer of the publication of the notice and order of hearing was on file prior to the hearing.

History: En. Sec. 25, Ch. 153, L. 1955; Sec. 94-9845, R.C.M. 1947; redes. 95-3227 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3227; amd. Sec. 29, Ch. 116, L. 1979.

46-23-307. Decision of board. Within 30 days after the hearing of any case, the board must make a decision in writing, and if such decision be made to recommend executive clemency, the copy of the decision together with all papers used in each case shall be immediately transmitted to the governor.

History: En. Sec. 27, Ch. 153, L. 1955; Sec. 94-9847, R.C.M. 1947; redes. 95-3229 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3229.

46-23-308 through 46-23-314 reserved.

46-23-315. Authority of governor to grant respite. The governor has the power to grant respites after conviction and judgment for any offenses committed against the criminal laws of the state for such time as he thinks proper.

History: En. Sec. 28, Ch. 153, L. 1955; Sec. 94-9848, R.C.M. 1947; redes. 95-3230 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3230.

46-23-316. Governor's report to legislature. The governor must communicate to the legislature at each regular session each case of remission of fine or forfeiture, reprieve, commutation, or pardon granted since the last previous report, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of remission, commutation, pardon, or reprieve, with the reason for granting the same, and the objection, if any, of any of the members of the board made thereto.

History: En. Sec. 29, Ch. 153, L. 1955; Sec. 94-9849, R.C.M. 1947; redes. 95-3231 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3231.

Part 4

Supervised Release Program

46-23-401. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Applicant" means any prisoner who is eligible under 46-23-411 and who signs an application to participate in the supervised release program.

(2) "Board" means the board of pardons provided for in 2-15-2302.

(3) "Department" means the department of institutions provided for in 2-15-2301.

(4) "Prisoner" means a person sentenced by a state district court to a term of confinement in the state prison.

(5) "State prison" means the Montana state prison at Deer Lodge or any adult correctional facility designated by the department.

(6) "Sponsor" means any federal, state, county, local, or private agency, Indian tribe and reservation, or any person, group, association, or organization approved by the department to undertake the supervision of prisoners participating in the supervised release program.

(7) "Supervising agent" means a probation and parole officer of the department.

History: En. Sec. 2, Ch. 288, L. 1969; amd. Sec. 92, Ch. 120, L. 1974; amd. Sec. 2, Ch. 496, L. 1975; R.C.M. 1947, 95-2218; amd. Sec. 1, Ch. 583, L. 1981.

Compiler's Comments

1981 Amendment: Substituted the definition of "applicant" for ""Applicant" means any prisoner who has signed an application to participate in the prisoner furlough program" in (1); deleted "jail" as a defined term; inserted "state" before "district court" in the definition of prisoner in (4); substituted "or" for "and" after "Montana state prison at Deer Lodge" in the definition of state prison in (5); substituted "designated by the department" for "under the direction of the department" in the definition of state prison in (5); substituted "Sponsor" for "Supervising agency" as the defined term in (6); changed "furlough program" to "supervised release program" at the end of (6); and added subsection (7).

46-23-402 through 46-23-404. Repealed. Sec. 13, Ch. 583, L. 1981.

Compiler's Comments

Histories of Repealed Sections:

46-23-402. En. Sec. 1, Ch. 288, L. 1969; amd. Sec. 1, Ch. 496, L. 1975; R.C.M. 1947, 95-2217; amd. Sec. 30, Ch. 116, L. 1979; amd. Sec. 1, Ch. 635, L. 1979.

46-23-403. En. Sec. 8, Ch. 288, L. 1969; amd. Sec. 8, Ch. 496, L. 1975; amd. Sec. 39, Ch. 184, L. 1977; R.C.M. 1947, 95-2224.

46-23-404. En. Sec. 9, Ch. 288, L. 1969; R.C.M. 1947, 95-2225.

46-23-405. Establishing program — rules. The department is authorized and directed to establish a supervised release program and make rules in accordance with Title 2, chapter 4 (the Montana Administrative Procedure Act), to implement and control the same. Rules shall include guidelines for:

(1) prisoner eligibility;

(2) prisoner participation in a recognized educational, treatment, or training program or work program in conjunction with any of the above programs;

(3) approval of the sponsor;

(4) review of a board decision to deny an applicant admittance into the program;

(5) supervision of the prisoner by or under the direction of a supervising agent while he is in the program;

(6) conducting revocation hearings;

(7) establishment of a program by the prisoner; and

(8) any other provisions necessary to implement this part.

History: En. Secs. 3, 7, Ch. 288, L. 1969; amd. Secs. 3, 7, Ch. 496, L. 1975; R.C.M. 1947, 95-2219, 95-2223(1); amd. Sec. 2, Ch. 635, L. 1979; amd. Sec. 2, Ch. 583, L. 1981.

Compiler's Comments

1981 Amendment: Chapter 583 substituted "supervised release program" for "furlough program" near the beginning of the section; inserted "(the Montana Administrative Procedure Act)" after "Title 2, chapter 4" near the beginning of the section; substituted (2) as it presently reads for "participating in an educational, treatment, or training program"; substituted "the sponsor" for "supervising agency" at the end of (3); substituted (4) as it presently reads for "review of determinations in furlough application"; and added subsections (5) through (8).

46-23-406. Repealed. Sec. 13, Ch. 583, L. 1981.

History: En. Sec. 7, Ch. 288, L. 1969; amd. Sec. 7, Ch. 496, L. 1975; R.C.M. 1947, 95-2223(2).

46-23-407 through 46-23-410 reserved.

46-23-411. Application to participate — eligibility. (1) Any prisoner, except a prisoner serving a sentence imposed under 46-18-202(2), may make application to participate in the supervised release program if he has served at least one-half of the time required to be considered for parole and not more than 15 months remain before he is eligible for parole.

(2) Prisoners serving sentences with the restriction imposed under 46-18-202(2) are not eligible for participation in the program.

(3) In order to be accepted into the program, an applicant must qualify under the rules established by the department.

History: En. Sec. 4, Ch. 288, L. 1969; amd. Sec. 4, Ch. 496, L. 1975; amd. Sec. 2, Ch. 580, L. 1977; R.C.M. 1947, 95-2220; amd. Sec. 3, Ch. 635, L. 1979; amd. Sec. 3, Ch. 583, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "confined in the state prison" after "Any prisoner" at the beginning of (1); substituted "supervised release program" for "furlough program" in the middle of (1); deleted "qualifies under the rules established by the department" after "at least one-half of the time required to be considered for parole and" near the end of (1); added "not more than 15 months remain before he is eligible for parole"; and added subsections (2) and (3).

46-23-412. Board's action on application. The board shall approve or deny the application of each prisoner after careful study of the prisoner's release plans, criminal history, and all other pertinent case material. The board shall grant the applicant a hearing consistent with the procedural rules adopted by it for parole hearings pursuant to 46-23-218.

History: En. Sec. 5, Ch. 288, L. 1969; amd. Sec. 5, Ch. 496, L. 1975; R.C.M. 1947, 95-2221(1), (5); amd. Sec. 4, Ch. 583, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "At the meeting of the board following the signing of any prisoner's application" at the beginning of the section; substituted "prisoner's release plans" for "prisoner's furlough plans" in the middle of the first sentence; deleted a list of rules to be observed when the board meets to consider an application; deleted "Final authority in all matters pertaining to prisoner furloughs is in the department." at the end of the section; and added the last sentence of the section.

46-23-413 through 46-23-415. Repealed. Sec. 13, Ch. 583, L. 1981.

Compiler's Comments

Histories of Repealed Sections:

46-23-413. En. Sec. 5, Ch. 288, L. 1969; amd. Sec. 5, Ch. 496, L. 1975; R.C.M. 1947, 95-2221(7).

46-23-414. En. Sec. 5, Ch. 288, L. 1969; amd. Sec. 5, Ch. 496, L. 1975; R.C.M. 1947, 95-2221(2) thru (4), (6).

46-23-415. En. Sec. 6, Ch. 288, L. 1969; amd. Sec. 6, Ch. 496, L. 1975; R.C.M. 1947, 95-2222.

46-23-416 through 46-23-420 reserved.

46-23-421. Responsibility of department and supervising agent. The department shall be responsible for the activities of a prisoner participating in a supervised release program under this part. The department may delegate jurisdictional supervision to a supervising agent who shall be responsible for the activities of the prisoner during his supervised release.

History: En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(1); amd. Sec. 5, Ch. 583, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "supervised release program" for "furlough program" near the end of the first sentence; and substituted the last sentence for "The department may delegate jurisdictional supervision of work furlough participants to the adult parole and probation field service. The supervising agency shall be responsible for those activities of a furloughed prisoner for which it is responsible in the written furlough agreement."

Cross-References

Per diem payments for residential correctional programs, 53-1-501.

46-23-422. Violation of supervised release program by prisoner — revocation. (1) If a prisoner in a supervised release program violates a condition established for the program, the department may issue a warrant for his arrest. Upon a second or subsequent violation, the department shall issue a warrant for the prisoner's arrest.

(2) The prisoner shall be granted a hearing within a reasonable time on or near the site of the alleged violation to determine whether a violation of the supervised release conditions occurred. The prisoner may be represented by counsel at the hearing at his own expense. The hearing shall be conducted by a hearing officer of the department. The prisoner shall have all opportunities provided under 46-23-1024 and 46-23-1025 pertaining to on-site hearings for parole revocation. If probable cause is established that a violation of the supervised release has occurred, the prisoner shall be returned to the state prison.

(3) Within a reasonable time after the prisoner's return to the state prison, the board shall conduct a revocation proceeding in accordance with rules established under 46-23-405.

(4) If the terms of the prisoner's release have not been violated, the prisoner's case shall be assigned to a supervising agent and a new supervised release program shall be worked out.

History: En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(2); amd. Sec. 4, Ch. 635, L. 1979; amd. Sec. 2, Ch. 328, L. 1981; amd. Sec. 6, Ch. 583, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 328 substituted "department of institutions" for "board of pardons" after "hearing officer of the" in (2). The Code Commissioner deleted "of institutions" because "department" is defined in 46-23-401.

Chapter 583 substituted (1) for "If any prisoner released from actual prison confinement under the furlough program fails to comply with the rules of the furlough agreement, he shall be called by the department or by the supervising agency to appear before the department or supervising agency"; deleted "If a conference is not sufficient to resolve the situation and if the prisoner continues in his noncompliance" at the beginning of (2); substituted "whether a violation of the supervised release conditions occurred" for "whether a violation of the furlough agreement exists" at the end of the first sentence of (2); substituted "department" for "board of pardons" at the end of the third sentence of (2); deleted "on furlough" after "The prisoner" at the beginning of the fourth sentence of (2); substituted the last sentence in (2) for "If reasonable grounds are established for violation of the furlough agreement, the furlough shall be cancelled and the prisoner shall be returned to the prison"; substituted (3) for "At the next meeting of the board of pardons after the return of the prisoner to the prison, the prisoner shall be granted a due process hearing in order to determine if the prisoner has in fact violated the terms of the prisoner's furlough release. If it is determined that the prisoner has in fact violated the terms of the prisoner's furlough, the prisoner shall remain at the prison"; and substituted "supervising agent and a new supervised release program shall be worked out" for "parole agent and the new furlough arrangement shall be worked out" at the end of (4).

46-23-423 through 46-23-425. Repealed. Sec. 13, Ch. 583, L. 1981.

Compiler's Comments

Histories of Repealed Sections:

46-23-423. En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(3).

46-23-424. En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(4).

46-23-425. En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(5); amd. Sec. 5, Ch. 635, L. 1979.

46-23-426. Escape. A person convicted of escape from a supervised release program is punishable as provided in 45-7-306. A person convicted of such an escape and sentenced therefor shall serve such sentence consecutively with the remainder of the original sentence as provided in 46-18-401.

History: En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(6); amd. Sec. 7, Ch. 583, L. 1981.

Compiler's Comments

1981 Amendment: Rewrote entire section. The section formerly provided "For the purpose of this part, the provisions relating to escape in 45-7-306 shall apply unless aggravating circumstances require a more severe penalty."

Parts 5 through 9 reserved

Part 10

Supervision of Probationers and Parolees

46-23-1001. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of pardons provided for in 2-15-2302.

(2) "Department" means the department of institutions provided for in Title 2, chapter 15, part 23.

(3) "Parole" means the release to the community of a prisoner by the decision of the board prior to the expiration of his term, subject to conditions imposed by the board and subject to supervision of the department.

(4) "Probation" means the release by the court without imprisonment, except as otherwise provided by law, of a defendant found guilty of a crime upon verdict or plea, subject to conditions imposed by the court and subject to the supervision of the department upon direction of the court.

History: En. 95-3301 by Sec. 7, Ch. 333, L. 1975; R.C.M. 1947, 95-3301.

46-23-1002. Powers of the department. The department may:

(1) appoint probation and parole officers and other employees necessary to administer this part;

(2) adopt rules for the conduct of persons placed on parole or probation, except that the department may not make any rule conflicting with conditions of parole imposed by the board or conditions of probation imposed by a court.

History: En. 95-3302 by Sec. 8, Ch. 333, L. 1975; R.C.M. 1947, 95-3302.

46-23-1003. Qualifications of probation and parole officers. Probation and parole officers shall have at least a college degree and shall have received at least some formal training in behavioral sciences. Exceptions to this rule must be approved by the department. Related work experience in the areas listed in 2-15-2302(2) may be substituted for educational requirements at the rate of 1 year of experience for 9 months formal education if approved by the department. All present employees will be exempt from this requirement but are encouraged to further their education at the earliest opportunity.

History: En. 95-3302.1 by Sec. 4, Ch. 333, L. 1975; R.C.M. 1947, 95-3302.1.

46-23-1004. Duties of the department. The department is responsible for any investigation and supervision requested by the board or the courts. The department shall:

(1) divide the state into districts and assign probation and parole officers to serve in these districts and courts;

(2) obtain any necessary office quarters for the staff in each district;

(3) assign the secretarial, bookkeeping, and accounting work to the clerical employees, including receipt and disbursement of money;

(4) direct the work of the probation and parole officers and other employees;

(5) formulate methods of investigation, supervision, recordkeeping, and reports;

(6) conduct training courses for the staff;

(7) cooperate with all agencies, public and private, which are concerned with the treatment or welfare of persons on probation or parole;

(8) administer the interstate compact for the supervision of parolees and probationers.

History: **En. Sec. 8, Ch. 153, L. 1955; Sec. 94-9828, R.C.M. 1947; redes. 95-3210 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 85, Ch. 120, L. 1974; Sec. 95-3210, R.C.M. 1947; amd. and redes. 95-3303 by Sec. 9, Ch. 333, L. 1975; R.C.M. 1947, 95-3303.**

46-23-1005 through 46-23-1010 reserved.

46-23-1011. Supervision on probation. (1) The department shall supervise persons during their probation period in accord with the conditions set by a court.

(2) A copy of the conditions of probation shall be signed by the probationer and given to him and his probation and parole officer who shall report on his progress under rules of the court.

(3) The probation and parole officer shall regularly advise and consult with the probationer to encourage him to improve his condition and conduct and inform him of restoration of his rights on successful completion of his sentence.

(4) The probation and parole officer may recommend and a court may modify any condition of probation or suspension of sentence at any time. Notice shall be given to the probation and parole officer before any condition is modified, and he shall be given an opportunity to present his ideas or recommendations on any modification. A copy of a modification of conditions shall be delivered to the probation and parole officer and the probationer.

(5) The probation and parole officer shall keep records as the department or the court may require.

History: **En. 95-3304 by Sec. 10, Ch. 333, L. 1975; R.C.M. 1947, 95-3304.**

46-23-1012. Arrest when violations of probation alleged. (1) At any time during probation or suspension of sentence a court may issue a warrant for the arrest of the defendant for violation of any of the conditions of release or a notice to appear to answer to a charge of violation. Such notice shall be personally served upon the defendant. The warrant shall authorize all officers named therein to return such defendant to the custody of the court or to any suitable detention facility designated by the court.

(2) Any probation and parole officer may arrest such defendant without a warrant or may deputize any other officer with power of arrest to do so by giving him a written statement setting forth that the defendant has, in the judgment of said probation and parole officer, violated the conditions of his

release. Such written statement delivered with the defendant by the arresting officer to the official in charge of a county jail or other place of detention shall be sufficient warrant for the detention of the defendant. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation.

(3) Provisions regarding release on bail of persons charged with crime shall be applicable to the defendants arrested under these provisions.

History: En. Sec. 11, Ch. 153, L. 1955; Sec. 94-9831, R.C.M. 1947; redes. 95-3213 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3213, R.C.M. 1947; redes. 95-3305 by Sec. 15, Ch. 333, L. 1975; R.C.M. 1947, 95-3305(part).

46-23-1013. Action of court after arrest. (1) Upon such arrest and detention, the probation and parole officer shall immediately notify the court with jurisdiction over such prisoner and shall submit in writing a report showing in what manner the defendant has violated the conditions of release. Thereupon, or upon an arrest by warrant as herein provided, the court shall cause the defendant to be brought before it without unnecessary delay for a hearing on the violation charged. The hearing may be informal or summary.

(2) If the violation is established, the court may continue to revoke the probation or suspension of sentence and may require him to serve the sentence imposed or any lesser sentence and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed.

(3) If it shall appear that he has violated the provisions of his release, whether the time from the issuing of such warrant to the date of his arrest or any part of it shall be counted as time served on probation or suspended sentence shall be determined by the court.

History: En. Sec. 11, Ch. 153, L. 1955; Sec. 94-9831, R.C.M. 1947; redes. 95-3213 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3213, R.C.M. 1947; redes. 95-3305 by Sec. 15, Ch. 333, L. 1975; R.C.M. 1947, 95-3305(part).

46-23-1014. When probationer considered a fugitive. A probationer or defendant under suspension of sentence for whose return a warrant has been issued by the court shall after the issuance of the warrant, if it is found that such warrant cannot be served, be deemed a fugitive from or to have fled from justice.

History: En. Sec. 11, Ch. 153, L. 1955; Sec. 94-9831, R.C.M. 1947; redes. 95-3213 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3213, R.C.M. 1947; redes. 95-3305 by Sec. 15, Ch. 333, L. 1975; R.C.M. 1947, 95-3305(part).

46-23-1015 through 46-23-1020 reserved.

46-23-1021. Supervision on parole. (1) The department shall retain custody of all persons placed on parole and shall supervise the persons during their parole period in accord with the conditions set by the board.

(2) The department shall assign personnel to assist persons eligible for parole in preparing a parole plan. Department personnel shall make a report of their efforts and findings to the board prior to its consideration of the case of the eligible person.

(3) A copy of the conditions of his parole shall be signed by the parolee and given to him and to his probation and parole officer, who shall report on his progress under the rules of the board.

(4) The probation and parole officer shall regularly advise and consult with the parolee, assist him in adjusting to community life, and inform him of the restoration of his rights on successful completion of sentence.

(5) The probation and parole officer shall keep such records as the board or department may require. All records shall be entered in the master file of the individual.

History: En. 95-3306 by Sec. 11, Ch. 333, L. 1975; amd. Sec. 62, Ch. 184, L. 1977; R.C.M. 1947, 95-3306.

46-23-1022. Parole services. (1) To assist parolees the department may, in addition to other services, provide the following:

(a) employment counseling, job placement, and assistance in residential placement;

(b) family and individual counseling and treatment placement;

(c) financial counseling;

(d) vocational and educational counseling and placement; and

(e) referral services to any other state or local agencies.

(2) The department may purchase necessary services for a parolee if they are otherwise unavailable and the parolee is unable to pay for them. It may assess all or part of the costs of such services to a parolee in accordance with his ability to pay for them.

History: En. 95-3307 by Sec. 12, Ch. 333, L. 1975; R.C.M. 1947, 95-3307.

46-23-1023. Arrest of alleged parole violator. (1) At any time during release on parole or conditional release, the department may issue a warrant for the arrest of the released prisoner for violation of any of the conditions of release or a notice to appear to answer to a charge of violation. The notice shall be served personally upon the prisoner. The warrant shall authorize all officers named therein to return the prisoner to the actual custody of the penal institution from which he was released or to any other suitable detention facility designated by the department.

(2) Any probation and parole officer may arrest the prisoner without a warrant or may deputize any other officer with power to arrest to do so by giving him a written statement setting forth that the prisoner has, in the judgment of the probation and parole officer, violated the conditions of his release. The written statement delivered with the prisoner by the arresting officer to the official in charge of the institution from which the prisoner was released or other place of detention shall be sufficient warrant for the detention of the parolee or conditional releasee. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation.

(3) Pending hearing, as provided in 46-23-1024 and 46-23-1025, upon any charge of violation the prisoner may, if circumstances warrant, be incarcerated in the institution.

History: En. Sec. 18, Ch. 153, L. 1955; Sec. 94-9838, R.C.M. 1947; amd. Sec. 1, Ch. 140, L. 1973; redes. 95-3220 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3220, R.C.M. 1947; amd. and redes. 95-3308 by Sec. 13, Ch. 333, L. 1975; amd. Sec. 63, Ch. 184, L. 1977; R.C.M. 1947, 95-3308(1).

Cross-References

Duration of parole not to exceed maximum sentence — exception for fugitive, 46-23-216.

46-23-1024. Initial hearing after arrest. (1) After the arrest of the prisoner, a hearing shall be held within a reasonable time, unless the hearing is waived by the parolee, to determine whether there is probable cause or reasonable grounds to believe that the arrested parolee has committed acts which would constitute a violation of parole conditions. An independent officer, who need not be a judicial officer, must preside over the hearing. The hearing must be conducted at or reasonably near the place of the alleged parole violation or arrest and as promptly as convenient after arrest. The parolee must be given notice of the hearing and must be allowed to appear and speak in his own behalf and introduce relevant information to the hearings officer.

(2) The hearings officer shall make a summary of what transpires at the hearing in terms of the responses and position of the parolee and the substance of the documents or evidence given in support of parole revocation. Based on the information given to him, the hearings officer shall determine whether there is probable cause to hold the parolee for the final decision of the board of pardons as provided in 46-23-1025.

History: En. Sec. 18, Ch. 153, L. 1955; Sec. 94-9838, R.C.M. 1947; amd. Sec. 1, Ch. 140, L. 1973; redes. 95-3220 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3220, R.C.M. 1947; amd. and redes. 95-3308 by Sec. 13, Ch. 333, L. 1975; amd. Sec. 63, Ch. 184, L. 1977; R.C.M. 1947, 95-3308(2).

Cross-References

Furlough violation — on-site hearing for parole revocation, 46-23-422.

46-23-1025. Report to and action by the board. (1) If the hearings officer determines that there is probable cause to believe that the prisoner has violated a condition of his parole, the probation and parole officer shall immediately notify the board and shall submit in writing a report showing in what manner the prisoner has violated the conditions of release. This report shall be accompanied by the findings of the hearings officer.

(2) Thereupon, the board shall cause the prisoner to be promptly brought before it for a hearing on the violation charged under such rules as the board may adopt. If the violation is established, the board may continue or revoke the parole or conditional release or enter such other order as it may see fit.

(3) If it appears that he has violated the provisions of his release, the board shall determine whether the time from the issuing of the warrant to the date of his arrest or any part of it will be counted as time served under the sentence.

History: En. Sec. 18, Ch. 153, L. 1955; Sec. 94-9838, R.C.M. 1947; amd. Sec. 1, Ch. 140, L. 1973; redes. 95-3220 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3220, R.C.M. 1947; amd. and redes. 95-3308 by Sec. 13, Ch. 333, L. 1975; amd. Sec. 63, Ch. 184, L. 1977; R.C.M. 1947, 95-3308(3).

46-23-1026. When prisoner considered a fugitive. A prisoner for whose return a warrant has been issued shall, after the issuance of the warrant, if it is found that the warrant cannot be served, be considered a fugitive or to have fled from justice.

History: En. Sec. 18, Ch. 153, L. 1955; Sec. 94-9838, R.C.M. 1947; amd. Sec. 1, Ch. 140, L. 1973; redes. 95-3220 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3220, R.C.M. 1947; amd. and redes. 95-3308 by Sec. 13, Ch. 333, L. 1975; amd. Sec. 63, Ch. 184, L. 1977; R.C.M. 1947, 95-3308(4).

Cross-References

Duration of parole not to exceed maximum sentence — exception for fugitive, 46-23-216.

Part 11

Interstate Supervision of Probation and Parole

Part Cross-References
Duty of Department of Institutions to administer interstate compact, 46-23-1004.

46-23-1101. Short title. This part may be cited as the "Uniform Act for Out-of-State Parolee Supervision".

History: En. Sec. 4, Ch. 189, L. 1937; Sec. 94-7902, R.C.M. 1947; redes. 95-3202 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3202.

Cross-References
Extradition — violation of subdivision laws, 76-4-1246.

46-23-1102. Authority of governor to make interstate compact regarding probation and parole — terms. The governor of this state is hereby authorized and directed to enter into a compact on behalf of the state of Montana with any of the United States legally joining therein in the form substantially as follows:

A COMPACT. Entered into by and among the contracting states, signatories hereto, with the consent of the Congress of the United States of America, granted by an act entitled "An Act Granting the Consent of Congress to Any Two or More States to Enter into Agreements or Compacts for Cooperative Effort and Mutual Assistance in the Prevention of Crime and for Other Purposes."

The contracting states solemnly agree:

(1) that it shall be competent for the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, if:

(a) such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there;

(b) though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than 1 year prior to his coming to the sending state and has not resided within the sending state more than 6 continuous months immediately preceding the commission of the offense for which he has been convicted.

(2) that each receiving state will assume the duties of visitation and of supervision over the probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees;

(3) that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or

parole. For that purpose no formality will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of states party hereto as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state; provided, however, that if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

(4) that the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this compact without interference;

(5) that the governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact;

(6) that this compact shall become operative immediately upon its ratification by any state as between it and any other state or states so ratifying. When ratified it shall have the full force and effect of law within such state, the form of ratification to be in accordance with the laws of the ratifying state.

(7) that this compact shall continue in force and remain binding upon each ratifying state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which ratified it, by sending 6 months' notice in writing of its intention to withdraw from the compact to the other states party hereto.

History: En. Sec. 1, Ch. 189, L. 1937; Sec. 94-7901, R.C.M. 1947; redes. 95-3201 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3201.

46-23-1103. Arranging for sending state to retake or reincarcerate violator. (1) Where supervision of a parolee or probationer is being administered pursuant to the interstate compact for the supervision of parolees and probationers, the appropriate judicial or administrative authorities in this state shall notify the compact administrator of the sending state whenever in their view consideration should be given to retaking or reincarceration for a parole or probation violation.

(2) Prior to the giving of any such notification, a hearing shall be held in accordance with this part within a reasonable time unless such hearing is waived by the parolee or probationer. Following termination of any such hearing, the appropriate officer or officers of this state shall, as soon as practicable, report to the sending state, furnish a copy of the hearing record, and make recommendations regarding the disposition to be made of the parolee or probationer by the sending state.

(3) Pending any proceeding pursuant to this section, the appropriate officers of this state may take custody of and detain the parolee or probationer

involved for a period not to exceed 15 days prior to the hearing and for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or reincarceration if it appears to the hearing officer or officers that retaking or reincarceration is likely to follow.

History: **En. Sec. 1, Ch. 75, L. 1973; R.C.M. 1947, 95-3202.1.**

46-23-1104. Hearing officers — who eligible. Any hearing pursuant to this part may be held before the administrator of the interstate compact for the supervision of parolees and probationers, a deputy of such administrator, or any other person authorized pursuant to the laws of this state to hear cases of alleged parole or probation violation, except that no hearing officer shall be the person making the allegation of violation.

History: **En. Sec. 2, Ch. 75, L. 1973; R.C.M. 1947, 95-3202.2.**

46-23-1105. Rights of parolee or probationer regarding hearing. With respect to any hearing pursuant to this part, the parolee or probationer:

(1) shall have reasonable notice in writing of the nature and content of the allegations to be made, including notice that its purpose is to determine whether there is probable cause to believe that he has committed a violation that may lead to a revocation of parole or probation;

(2) shall be permitted to consult with any persons whose assistance he reasonably desires prior to the hearing;

(3) shall have the right to confront and examine any persons who have made allegations against him unless the hearing officer determines that such confrontation would present a substantial present or subsequent danger of harm to such person or persons;

(4) may admit, deny, or explain the violation alleged and may present proof, including affidavits and other evidence, in support of his contentions. A record of the proceedings shall be made and preserved.

History: **En. Sec. 3, Ch. 75, L. 1973; R.C.M. 1947, 95-3202.3.**

46-23-1106. Hearing in another state — record, effect. In any case of alleged parole or probation violation by a person being supervised in another state pursuant to the interstate compact for the supervision of parolees and probationers, any appropriate judicial or administrative officer or agency in another state is authorized to hold a hearing on the alleged violation. Upon receipt of the record of a parole or probation violation hearing held in another state pursuant to a statute substantially similar to this part, such record shall have the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this state and any recommendations contained in or accompanying the record shall be fully considered by the appropriate officer or officers of this state in making disposition of the matter.

History: **En. Sec. 4, Ch. 75, L. 1973; R.C.M. 1947, 95-3202.4.**

CHAPTER 24

TREATMENT OF VICTIMS AND WITNESSES

Part 1 — General Provisions

Section
46-24-101. Purpose.
46-24-102. Training in victim assistance.

46-24-103. Duty of attorney general.
46-24-104. Consultation with victim of felony offense.
46-24-105. No cause of action for damages.

Part 2 — Services to Victim, Witness

46-24-201. Services to victims of crime.
46-24-202. Notification of available protective services.
46-24-203. Prompt notification to victims and witnesses of felony offenses.
46-24-204. Scheduling changes.
46-24-205. Notification to employer or creditor.
46-24-206. Property return.

Chapter Cross-References

Crimes, Title 45.

Witnesses, Title 46, ch. 15, part 1.

Crime Victims Compensation Act, Title 53, ch. 9.

Part 1

General Provisions

46-24-101. Purpose. The legislature declares that the purposes of this chapter are to:

(1) protect the role of crime victims and witnesses in the criminal justice process;

(2) assure that victims and witnesses of crime receive fair and proper treatment from law enforcement agencies and prosecutors; and

(3) provide a standard of conduct governing the treatment of victims and witnesses in criminal cases.

History: En. Sec. 1, Ch. 554, L. 1985.

Cross-References

Statutory provisions on evidence — "witness" defined, 26-1-101.

Crimes — general principles of liability — "witness" defined, 45-2-101.

46-24-102. Training in victim assistance. The Montana law enforcement academy shall offer education and training in victim assistance to law enforcement officers and prosecuting attorneys and shall provide such education and training in its regular curriculum, so that victims may be properly assisted.

History: En. Sec. 9, Ch. 554, L. 1985.

Cross-References

Law Enforcement Academy, Title 44, ch. 10.

46-24-103. Duty of attorney general. The attorney general shall assure that victims and witnesses of crime receive fair and proper treatment in the criminal justice system. In addition, the attorney general shall assure that victims and witnesses are provided important services and assistance as required under this chapter.

History: En. Sec. 10, Ch. 554, L. 1985.

Cross-References

Attorney General — general duties, 2-15-501.

Crime Victims Compensation Act, Title 53, ch. 9.

46-24-104. Consultation with victim of felony offense. The prosecuting attorney in a criminal case shall consult with the victim of a felony offense or, in the case of a minor child victim or homicide victim, with the family of the victim in order to obtain the views of the victim or his family regarding the disposition of the case, including:

(1) dismissal of the case;

(2) release of the accused pending judicial proceedings;

(3) plea negotiations; and

(4) pretrial diversion of the case from the judicial process.

History: En. Sec. 6, Ch. 554, L. 1985.

Cross-References

Crimes — general principles of liability — "felony" offense defined, 45-2-101.

46-24-105. No cause of action for damages. Nothing in this chapter may be construed to create a cause of action for damages against the state or one of its political subdivisions.

History: En. Sec. 11, Ch. 554, L. 1985.

Cross-References

Governmental entity — liability exposure and insurance coverage, Title 2, ch. 9.

Part 2

Services to Victim, Witness

46-24-201. Services to victims of crime. Law enforcement personnel shall assure that a victim of a crime receives emergency social and medical services as soon as possible and that such victim is given information on the following:

(1) the availability of crime victim compensation;

(2) community-based victim treatment programs;

(3) the role of the victim in the criminal justice process, including what he can expect from the system, as well as what the system expects from the victim; and

(4) stages in the criminal justice process of significance to a crime victim and the manner in which information about such stages may be obtained.

History: En. Sec. 2, Ch. 554, L. 1985.

Cross-References

Child abuse, neglect, and dependency — protective care, Title 41, ch. 3, part 3.

Restitution to victims, 46-18-241 through 46-18-249.

Crime Victims Compensation Act, Title 53, ch. 9.

46-24-202. Notification of available protective services. Law enforcement officers and prosecuting attorneys shall provide a victim or witness information on the availability of services to protect the victim or witness from intimidation.

History: En. Sec. 3, Ch. 554, L. 1985.

Cross-References
Protection of witnesses, Title 26, ch. 2, part 4.
Detaining witnesses — criminal — material witness, 46-11-601.

46-24-203. Prompt notification to victims and witnesses of felony offenses. (1) A person described in subsection (2) who provides the appropriate official with a current address and telephone number must receive prompt advance notification, if possible, of proceedings relating to his case, including:

(a) the arrest of an accused;

(b) the release of the accused pending judicial proceedings; and

(c) proceedings in the prosecution of the accused, including entry of a plea of guilty, the setting of a trial date, the sentencing schedule, the sentence imposed, the term of imprisonment, if imposed, and the release of the accused from imprisonment.

(2) A person entitled to notification under subsection (1) must be a victim or witness of a felony offense, a relative of such a victim or witness who is a minor, or a relative of a homicide victim.

History: En. Sec. 5, Ch. 554, L. 1985.

Cross-References
Crimes — general principles of liability — "felony" offense defined, 45-2-101.

46-24-204. Scheduling changes. (1) As soon as practicable, the prosecuting attorney shall notify a victim or witness of any scheduling changes that may affect the appearance of the victim or witness at a criminal justice proceeding that he is scheduled to attend.

(2) For the purpose of providing notification, the prosecuting attorney shall have available a system for promptly alerting a victim or witness that a scheduling change has been made.

History: En. Sec. 4, Ch. 554, L. 1985.

46-24-205. Notification to employer or creditor. (1) The law enforcement agency or prosecuting attorney in a criminal case shall assist a victim or witness who requests assistance in informing an employer that the need for victim and witness cooperation in the prosecution of the case may necessitate absence of the victim or witness from his place of employment.

(2) A law enforcement agency or prosecuting attorney shall assist a victim or witness who, as a direct result of a crime or because of cooperation with the law enforcement agency or prosecuting attorney, is subjected to serious financial strain. Such agency or prosecuting attorney shall assist the victim or witness by explaining to creditors the reason for such serious financial strain.

History: En. Sec. 8, Ch. 554, L. 1985.

46-24-206. Property return. A law enforcement agency or prosecuting attorney shall promptly return any of the victim's property held for evidentiary purposes, unless there is a compelling law enforcement reason for retaining such property.

History: En. Sec. 7, Ch. 554, L. 1985.

Cross-References
Disposition of property of deceased, 7-4-2917.
Custody and disposition of items seized by peace officer without search warrant, 46-5-303.

CHAPTERS 25 THROUGH 29

RESERVED

CHAPTER 30

UNIFORM CRIMINAL EXTRADITION ACT

Part 1 — General Provisions

Section

46-30-101. Definitions.
46-30-102. Nonwaiver by this state.

Part 2 — Extradition to Another State From This State

46-30-201. Fugitives from justice — duty of governor.
46-30-202. Prosecution pending in this state at time of requisition.
46-30-203. Extradition of persons who left demanding state involuntarily.
46-30-204. Extradition of persons not present in demanding state when crime committed.
46-30-205 through 46-30-210 reserved.
46-30-211. Demand — form.
46-30-212. Investigation by governor.
46-30-213. Issuance of arrest warrant by governor.
46-30-214. Recall of warrant or alias warrant.
46-30-215. Execution of warrant.
46-30-216. Authority of arresting officer.
46-30-217. Rights of accused persons — habeas corpus.
46-30-218. Penalty for violating accused's rights.
46-30-219 through 46-30-224 reserved.
46-30-225. Guilt or innocence of accused, when inquired into.
46-30-226. Confinement of accused in jail on route.
46-30-227. Arrest of accused before making of requisition.
46-30-228. Written waiver of extradition proceedings.

Part 3 — Procedure for Arresting Accused Without Warrant

46-30-301. Arrest of accused without warrant.
46-30-302. Commitment to await requisition.
46-30-303. Bail while awaiting requisition.
46-30-304. Extension of time of commitment or bail.
46-30-305. Forfeiture of bail.

Part 4 — Extradition to This State From Another State

46-30-401. Application for issuance of requisition.
46-30-402. Requisition by governor.
46-30-403. Extradition of persons held in another state.
46-30-404. Immunity from service of civil process.
46-30-405. No immunity from other criminal prosecutions.
46-30-406 through 46-30-410 reserved.
46-30-411. Expenses of bringing fugitives back to this state.
46-30-412. Restrictions on compensation for assisting return of fugitive.
46-30-413. Penalty for illegal compensation.

Part 1

General Provisions

46-30-101. Definitions. Where appearing in this chapter, the term:

(1) "governor" includes any person performing the functions of governor by authority of the law of this state;

(2) "executive authority" includes the governor and any person performing the functions of governor in a state other than this state;

(3) "state", referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States of America.

History: En. 95-3101 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3101.

46-30-102. Nonwaiver by this state. Nothing contained in this chapter may be considered a waiver by this state of its right, power, or privilege to try the demanded person for a crime committed within this state or of its right, power, or privilege to regain custody of the person by extradition proceedings or otherwise for the purpose of trial, sentence, or punishment for a crime committed within this state; nor may any proceedings had under this chapter which result in or fail to result in extradition be considered in any way a waiver by this state of any of its rights, privileges, or jurisdiction.

History: En. 95-3129 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 58, Ch. 184, L. 1977; R.C.M. 1947, 95-3129.

Part 2

Extradition to Another State From This State

46-30-201. Fugitives from justice — duty of governor. Subject to the provisions of this chapter, the provisions of the constitution of the United States controlling, and any and all acts of congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime who has fled from justice and is found in this state.

History: En. 95-3102 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3102.

Cross-References

Treason — of what it consists, Art. II, sec. 30, Mont. Const.

46-30-202. Prosecution pending in this state at time of requisition. If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the governor, in his discretion, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this state.

History: En. 95-3119 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3119.

46-30-203. Extradition of persons who left demanding state involuntarily. The governor of this state may also surrender on demand of the governor of any other state any person in this state who is charged in the manner provided in 46-30-401 with having violated the laws of the state whose governor is making the demand, even though such person left the demanding state involuntarily.

History: **En. 95-3105 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3105(part).**

46-30-204. Extradition of persons not present in demanding state when crime committed. The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in 46-30-211 with committing an act in this state or in a third state intentionally resulting in a crime in the state whose executive authority is making the demand. The provisions of this chapter not otherwise inconsistent shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime and has not fled therefrom.

History: **En. 95-3106 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3106.**

Cross-References

This section as exception to commitment to await requisition, 46-30-302.

46-30-205 through 46-30-210 reserved.

46-30-211. Demand — form. (1) No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging that the accused was present in the demanding state at the time of the commission of the alleged crime and that thereafter he fled from the state, except in cases arising under 46-30-204, and accompanied by:

(a) a copy of an indictment found or information supported by affidavit in the state having jurisdiction of the crime;

(b) a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereon; or

(c) a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation, or parole.

(2) The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state. The copy of the indictment, information, affidavit, judgment of conviction, or sentence must be authenticated by the executive authority making the demand.

History: **En. 95-3103 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3103.**

46-30-212. Investigation by governor. When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand and to report to him the situation and circumstances of the person so demanded and whether he ought to be surrendered.

History: **En. 95-3104 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3104.**

46-30-213. Issuance of arrest warrant by governor. If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

History: En. 95-3107 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3107.

46-30-214. Recall of warrant or alias warrant. The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.

History: En. 95-3121 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3121.

46-30-215. Execution of warrant. Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state, to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this chapter, to the duly authorized agent of the demanding state.

History: En. 95-3108 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3108.

46-30-216. Authority of arresting officer. Every such peace officer or other person empowered to make the arrest shall have the same authority to command assistance in arresting the accused as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

History: En. 95-3109 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3109.

Cross-References

Assisting a peace officer in making an arrest, 45-7-304, 46-6-402.

46-30-217. Rights of accused persons — habeas corpus. (1) No person arrested upon such warrant may be delivered over to the agent whom the executive authority demanding him has appointed to receive him unless he is first taken without delay before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged and that he has the right to demand and procure legal counsel.

(2) If the prisoner or his counsel states that he or they desire to test the legality of his arrest, the judge of the court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When the writ is applied for, notice thereof and of the time and place of hearing thereon shall be given to the prosecuting officer of the county in which the arrest was made and in which the accused is in custody and to the agent of the demanding state.

History: En. 95-3110 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 52, Ch. 184, L. 1977; R.C.M. 1947, 95-3110.

Cross-References

Duty of court to advise at initial appearance, 46-7-102.

Right to counsel, 46-8-101.

Court to advise defendant of rights, 46-12-202.

Right to counsel — sentencing hearing, 46-18-223.

Habeas corpus, Title 46, ch. 22.

Right to counsel — probation hearing, 46-23-204.

46-30-218. Penalty for violating accused's rights. Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the governor's warrant in willful disobedience of 46-30-217 shall be guilty of a misdemeanor and on conviction shall be fined not more than $1,000 or be imprisoned not more than 6 months, or both.

History: **En. 95-3111 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3111.**

46-30-219 through 46-30-224 reserved.

46-30-225. Guilt or innocence of accused, when inquired into. The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor or in any proceeding after the demand for extradition provided for in 46-30-211 has been presented to the governor except as it may be involved in identifying the person held as the person charged with the crime.

History: **En. 95-3120 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 55, Ch. 184, L. 1977; R.C.M. 1947, 95-3120.**

46-30-226. Confinement of accused in jail on route. (1) The officer or persons executing the governor's warrant of arrest or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city through which he may pass. The keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person, however, being chargeable with the expense of keeping.

(2) The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state or to whom a prisoner may have been delivered after waiving extradition in such other state and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass. The keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping; provided, however, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.

History: **En. 95-3112 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3112.**

46-30-227. Arrest of accused before making of requisition. (1) A judge or magistrate of this state shall issue a warrant directed to any peace officer commanding the officer to apprehend the person named therein wherever the person may be found in this state and to bring the person before the same or any other judge, magistrate, or court who or which may be available in or convenient of access to the place where the arrest is made to answer the charge or complaint and affidavit whenever:

(a) a person within this state is charged on the oath of a credible person before the judge or magistrate with the commission of a crime in another state and, except in cases arising under 46-30-204, with having fled from justice or with having been convicted of a crime in that state and having escaped from confinement or having broken the terms of his bail, probation, or parole; or

(b) a complaint is made before the judge or magistrate setting forth on the affidavit of a credible person in another state that a crime has been committed in the other state and that the accused is believed to be in this state and has been charged in the other state with:

(i) the commission of the crime and, except in cases arising under 46-30-204, having fled from justice; or

(ii) having been convicted of a crime in that state and having escaped from bail, probation, or parole.

(2) A certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

History: En. 95-3113 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 53, Ch. 184, L. 1977; R.C.M. 1947, 95-3113.

Cross-References

Arrest of accused without warrant, 46-30-301.

46-30-228. Written waiver of extradition proceedings. (1) Any person of this state charged with having committed any crime in another state or alleged to have escaped from confinement or broken the terms of his bail, probation, or parole may waive the issuance and service of the warrant provided for in 46-30-213 and 46-30-215 and all other procedure incidental to extradition proceedings by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he consents to return to the demanding state. Before such waiver shall be executed or subscribed by such person, it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in 46-30-217.

(2) If and when such consent has been duly executed, it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state and shall deliver or cause to be delivered to such agent or agents a copy of such consent.

(3) Nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights, or duties of the officers of the demanding state or of this state.

History: En. 95-3128 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3128.

Part 3

Procedure for Arresting Accused Without Warrant

46-30-301. Arrest of accused without warrant. The arrest of a person may be lawfully made also by any peace officer or a private person without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding 1 year. When so arrested, the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in 46-30-227. Thereafter his answer shall be heard as if he had been arrested on a warrant.

History: En. 95-3114 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3114; amd. Sec. 17, Ch. 79, L. 1983.

Compiler's Comments

1983 Amendment: In last sentence, changed "this" to "his".

46-30-302. Commitment to await requisition. If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under 46-30-204, that he has fled from justice, the judge or magistrate must by a warrant reciting the accusation commit him to the county jail for such a time not exceeding 30 days and specified in the warrant as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in 46-30-303 or until he shall be legally discharged.

History: En. 95-3115 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3115.

46-30-303. Bail while awaiting requisition. Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond or undertaking with sufficient sureties and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond or undertaking and for his surrender to be arrested upon the warrant of the governor of this state.

History: En. 95-3116 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3116.

46-30-304. Extension of time of commitment or bail. If the accused is not arrested under the warrant of the governor by the expiration of the time specified in the warrant, bond, or undertaking, a judge or magistrate may discharge him or may recommit him for a further period of 60 days or a supreme court justice or district court judge may again take bail for his appearance and surrender, as provided in 46-30-303, for a period not to exceed 60 days after the date of the new bond or undertaking.

History: En. 95-3117 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 54, Ch. 184, L. 1977; R.C.M. 1947, 95-3117.

46-30-305. Forfeiture of bail. If the prisoner is admitted to bail and fails to appear and surrender himself according to the conditions of his bond, the judge or magistrate by proper order shall declare the bond forfeited and order his immediate arrest without warrant if he be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds or undertakings given by the accused in criminal proceedings within this state.

History: En. 95-3118 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3118.

Cross-References

Recovery by state on forfeited bond, 46-9-503, 46-9-504.

Part 4

Extradition to This State From Another State

46-30-401. Application for issuance of requisition. (1) When the return to this state of a person charged with a crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged. The application shall state the name of the person charged, the crime charged against him, the approximate time, place, and circumstances of its commission, and the state in which he is believed to be, including the location of the accused therein at the time the application is made. It shall certify that in the opinion of the prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not being instituted to enforce a private claim.

(2) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation, or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county from which the escape was made shall present to the governor a written application for a requisition for the return of the person. The application shall state the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation, or parole, and the state in which he is believed to be, including the location of the person therein at the time the application is made.

(3) The application shall be verified by affidavit, executed in duplicate, and accompanied by two certified copies of the:

(a) indictment returned;

(b) information and affidavit filed;

(c) complaint made to the judge or magistrate stating the offense with which the accused is charged;

(d) judgment of conviction; or

(e) sentence.

(4) The prosecuting officer, parole board, warden, or sheriff may also attach such further affidavits and other documents in duplicate as he considers proper to be submitted with the application.

(5) One copy of the application, with the action of the governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information and affidavits, judgment of conviction, or sentence shall be filed in the office of the secretary of state to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

History: En. 95-3123 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 56, Ch. 184, L. 1977; R.C.M. 1947, 95-3123; amd. Sec. 172, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "governor" for "government" in the first sentence of (5).

Cross-References

Extradition of persons who left demanding state involuntarily, 46-30-203.

46-30-402. Requisition by governor. Whenever the governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation, or parole in this state from the chief executive of any other state or from the chief justice or an associate justice of the supreme court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state to some agent commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed.

History: En. 95-3122 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3122.

46-30-403. Extradition of persons held in another state. When it is desired to have returned to this state a person charged in this state with a crime and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

History: En. 95-3105 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3105(part).

46-30-404. Immunity from service of civil process. A person brought into this state on or after waiver of extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he is being or has been returned until he has been convicted in the criminal proceedings or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

History: En. 95-3127 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3127.

46-30-405. No immunity from other criminal prosecutions. After a person has been brought back to this state by extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.

History: En. 95-3130 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3130.

46-30-406 through 46-30-410 reserved.

46-30-411. Expenses of bringing fugitives back to this state. (1) When the governor of this state, in the exercise of the authority conferred by section 2, Article IV, of the constitution of the United States or by the laws of this state, demands from the executive authority of any state of the United States or of any foreign government the surrender to the authorities of this state of a fugitive from justice who has been found and arrested in such state or foreign government, the accounts of the person employed by him to bring back such fugitive must be audited by the attorney general and paid out of the state treasury.

(2) An agent of this state authorized to return a fugitive from justice to this state may utilize commercial transportation, aircraft, or motor vehicle to return the fugitive. The agent shall be paid travel expenses, as provided for

in 2-18-501 through 2-18-503, as amended, incurred in returning the fugitive to this state.

History: (1)En. 95-3124 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 18, Ch. 343, L. 1977; Sec. 95-3124, R.C.M. 1947; (2)En. Sec. 1, Ch. 331, L. 1975; amd. Sec. 31, Ch. 453, L. 1977; Sec. 95-3124.1, R.C.M. 1947; R.C.M. 1947, 95-3124, 95-3124.1; amd. Sec. 3, Ch. 446, L. 1979.

Cross-References

Mileage allowed when private vehicle used, 2-18-503.

46-30-412. Restrictions on compensation for assisting return of fugitive. No compensation, fee, or reward of any kind may be paid to or received by a public officer of this state or other person for a service rendered in procuring from the governor the demand mentioned in 46-30-411(1), for the surrender of the fugitive, or for conveying him to this state or detaining him therein, except as provided in 46-30-411.

History: En. 95-3125 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 57, Ch. 184, L. 1977; R.C.M. 1947, 95-3125.

46-30-413. Penalty for illegal compensation. Every person who violates any of the provisions of 46-30-412 is guilty of a misdemeanor.

History: En. 95-3126 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3126.

Cross-References

When no penalty is specified, 46-18-212.

CHAPTER 31

INTERSTATE AGREEMENT ON DETAINERS

Part 1 — Contents of Agreement

Section

46-31-101. Agreement on detainers — enactment and text.
46-31-102. Jurisdiction of district courts.

Part 2 — Enforcement of Agreement

46-31-201. Public agencies to cooperate in enforcement.
46-31-202. Warden to give over inmate.
46-31-203. Coordinator of agreement.
46-31-204. Penalty for escape from custody on detainer.

Chapter Cross-References

Extradition of persons held in another state, 46-30-403.

Part 1

Contents of Agreement

46-31-101. Agreement on detainers — enactment and text. The agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

Article I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations, or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

Article II

As used in this agreement:

(1) "state" shall mean a state of the United States, the United States of America, a territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico;

(2) "sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof;

(3) "receiving state" shall mean the state in which trial is to be had on an indictment, information, or complaint pursuant to Article III or Article IV hereof.

Article III

(1) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within 180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint; provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(2) The written notice and request for final disposition referred to in subsection (1) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of him, who shall

promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(3) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.

(4) Any request for final disposition made by a prisoner pursuant to subsection (1) hereof shall operate as a request for final disposition of all untried indictments, informations, or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections, or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this subsection shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(5) Any request for final disposition made by a prisoner pursuant to subsection (1) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of subsection (4) hereof and a waiver of extradition to the receiving state to serve any sentence there imposed upon him after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(6) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in subsection (1) hereof shall void the request.

Article IV

(1) The appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V(1) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information, or complaint shall have duly approved, recorded, and transmitted the request; and provided further that there shall be a period of 30 days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request

for temporary custody or availability either upon his own motion or upon motion of the prisoner.

(2) Upon receipt of the officer's written request as provided in subsection (1) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(3) In respect of any proceeding made possible by this article, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(4) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in subsection (1), but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(5) If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V(5) hereof, such indictment, information, or complaint shall not be of any further force or effect and the court shall enter an order dismissing the same with prejudice.

Article V

(1) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information, or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(2) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(a) proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given;

(b) a duly certified copy of the indictment, information, or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(3) If the appropriate authority shall refuse or fail to accept temporary custody of said person or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the periods provided by this chapter, the appropriate court of the jurisdiction where the indictment, information, or complaint

has been pending shall enter an order dismissing the same with prejudice and any detainer based thereon shall cease to be of any force or effect.

(4) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(5) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(6) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run, but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(7) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(8) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations, or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping, and returning the prisoner. The provisions of this subsection shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state or between a party state and its subdivisions as to the payment of costs or responsibilities therefor.

Article VI

(1) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(2) No provision of this agreement and no remedy made available by this agreement shall apply to any person who is adjudged to be mentally ill.

Article VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement and who shall provide within and without the state information necessary to the effective operation of this agreement.

Article VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

Article IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable, and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstances is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 215, L. 1963; Sec. 94-1101-1, R.C.M. 1947; redes. 95-3131 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3131; amd. Sec. 1, Ch. 346, L. 1985.

Compiler's Comments

1985 Amendment: In Article III(1) substituted "within 180 days" for "at the next term of court".

46-31-102. Jurisdiction of district courts. The phrase "appropriate court", as used in the agreement on detainers, shall with reference to the courts of this state mean district courts.

History: En. Sec. 2, Ch. 215, L. 1963; Sec. 94-1101-2, R.C.M. 1947; redes. 95-3132 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3132.

Part 2

Enforcement of Agreement

46-31-201. Public agencies to cooperate in enforcement. All courts, departments, agencies, officers, and employees of this state and its political subdivisions are hereby directed to enforce the agreement on detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purpose.

History: En. Sec. 3, Ch. 215, L. 1963; Sec. 94-1101-3, R.C.M. 1947; redes. 95-3133 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3133.

46-31-202. Warden to give over inmate. It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to give over the person of any inmate thereof whenever so required by the operation of the agreement on detainers.

History: En. Sec. 5, Ch. 215, L. 1963; Sec. 94-1101-5, R.C.M. 1947; redes. 95-3135 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3135.

46-31-203. Coordinator of agreement. The governor shall appoint an officer of this state as coordinator of this agreement who, acting jointly with like officers of party states, shall promulgate rules to carry out more effectively the terms and provisions of this chapter and who shall provide within and without the state information necessary to the effective operation of this agreement.

History: En. Sec. 6, Ch. 215, L. 1963; Sec. 94-1101-6, R.C.M. 1947; redes. 95-3136 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3136.

46-31-204. Penalty for escape from custody on detainer. Every prisoner confined in state prison for a term less than for life who has been lawfully delivered into the temporary custody of appropriate officers of a party state for trial on a charge or detainer based on an untried indictment, information, or complaint and who escapes therefrom is punishable by a fine in an amount not to exceed $50,000, or by imprisonment in the state prison for a term of not less than 1 year or more than 10 years, or by both, said second term of imprisonment to commence from the time he would otherwise have been discharged from said prison.

History: En. Sec. 4, Ch. 215, L. 1963; Sec. 94-1101-4, R.C.M. 1947; redes. 95-3134 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3134; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

TITLES 47 AND 48

RESERVED

TITLE 49

HUMAN RIGHTS

Ch.
1. Basic Rights.
2. Illegal Discrimination.
3. Governmental Code of Fair Practices.
4. Rights of the Handicapped.

CHAPTER 1

BASIC RIGHTS

Part 1 — Basic Personal Rights

Section
49-1-101. Right of protection from personal injury.
49-1-102. Freedom from discrimination.
49-1-103. Right to use force.

Part 2 — Basic Political Rights

49-1-201. Right to state's protection.
49-1-202. Right to hold elected office.
49-1-203. Rights and duties of electors as compared to nonelectors.
49-1-204. Rights and duties of citizens of other states.

Chapter Cross-References

Inalienable rights, Art. II, sec. 3, Mont. Const.

Equal protection — prohibition on discrimination, Art. II, sec. 4, Mont. Const.; Amend. 14, U.S. Const.

Freedom of religion, Art. II, sec. 5, Mont. Const.

Freedom of assembly, Art. II, sec. 6, Mont. Const.

Freedom of speech, expression, and press, Art. II, sec. 7, Mont. Const.

Right to bear arms, Art. II, sec. 12, Mont. Const.

Adult rights, Art. II, sec. 14, Mont. Const.

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

Access to courts, Art. II, sec. 16, Mont. Const.

Due process of law, Art. II, sec. 17, Mont. Const.; Amend. 14, U.S. Const.

Ex post facto, obligation of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.

Unenumerated rights, Art. II, sec. 34, Mont. Const.; Amend. 9, U.S. Const.

Freedom of religion, speech, press, assembly, and petition, Amend. 1, U.S. Const.

Double jeopardy, self-incrimination, and due process of law, Amend. 5, U.S. Const.

State Coordinator of Indian Affairs, 2-15-1813, 90-11-101, 90-11-102.

Rights and obligations of minors, Title 41, ch. 1.

Effect of former status as mental patient, 53-21-189.

Part 1

Basic Personal Rights

Part Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Search and seizure, Art. II, sec. 11, Mont. Const.; Amend. 4, U.S. Const.; Title 46, ch. 5.

Quartering soldiers, Art. II, sec. 32, Mont. Const.; Amend. 3, U.S. Const.

Husband and wife, Title 40, ch. 2.

49-1-101. Right of protection from personal injury. Besides the personal rights mentioned or recognized in other statutes and subject to the qualifications and restrictions provided by law, every person has the right of protection from bodily restraint or harm, personal insult, defamation, and injury to his personal relations.

History: En. Sec. 30, Civ. C. 1895; re-en. Sec. 3600, Rev. C. 1907; re-en. Sec. 5688, R.C.M. 1921; Cal. Civ. C. Sec. 43; Field Civ. C. Sec. 27; re-en. Sec. 5688, R.C.M. 1935; R.C.M. 1947, 64-201; amd. Sec. 1, Ch. 177, L. 1979.

Cross-References

Habeas corpus, Art. II, sec. 19, Mont. Const.

Bail, Art. II, sec. 21, Mont. Const.; Amend. 8, U.S. Const.

Excessive sanctions, Art. II, sec. 22, Mont. Const.; Amend. 8, U.S. Const.

Detention to secure testimony, Art. II, sec. 23, Mont. Const.

Rights of the accused, Art. II, sec. 24, Mont. Const.; Amend. 6, U.S. Const.

Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

Trial by jury, Art. II, sec. 26, Mont. Const.

Imprisonment for debt, Art. II, sec. 27, Mont. Const.

Habeas corpus, bill of attainder and ex post facto, Art. I, sec. 9, U.S. Const.

Slavery, Amend. 13, U.S. Const.

Limit on rights, 1-3-205.

Consent, 1-3-206.

Remedy, 1-3-214.

Voter information pamphlet — rejection of defamatory matter, 13-27-408.

Code of Fair Campaign Practices, Title 13, ch. 35, part 3.

Availability of remedies — liability, Title 27, ch. 1.

Abolition of certain causes of action, Title 27, ch. 1, part 6.

Libel and slander, Title 27, ch. 1, part 8.

Actions against consumer reporting agencies, 31-3-141.

Defaming insurer prohibited, 33-18-302.

Defaming competitors — hearing aid dispensers, 37-16-411.

Marital status irrelevant to parent-child relationship, 40-6-103.

Use of force in defense of person, 45-3-102.

Mistreatment of prisoners, 45-5-204.

False imprisonment, 45-5-301.

Criminal defamation, 45-8-212.

Bail, Title 46, ch. 9.

Mental competency of criminal defendants, Title 46, ch. 14.

Criminal defamation — jury to decide law, 46-16-103.

Habeas corpus, Title 46, ch. 22.

Commitment of the developmentally disabled, Title 53, ch. 20, part 1.

Commitment of the seriously mentally ill, Title 53, ch. 21, part 1.

49-1-102. Freedom from discrimination. The right to be free from discrimination because of race, creed, religion, color, sex, physical or mental handicap, age, or national origin is recognized as and declared to be a civil right. This right shall include but not be limited to:

(1) the right to obtain and hold employment without discrimination; and

(2) the right to the full enjoyment of any of the accommodation facilities or privileges of any place of public resort, accommodation, assemblage, or amusement.

History: En. Sec. 1, Ch. 201, L. 1965; amd. Sec. 1, Ch. 39, L. 1971; amd. Sec. 1, Ch. 77, L. 1974; amd. Sec. 1, Ch. 524, L. 1975; amd. Sec. 6, Ch. 38, L. 1977; R.C.M. 1947, 64-301.

Cross-References

Classified service employees — municipal commission-manager government, 7-3-4415.

Employment by county Board of Park Commissioners, 7-16-2326.

Work-study program, 20-25-707.

Exclusion of handicapped from minimum wage and overtime compensation laws, 39-3-406.

Women in employment, Title 39, ch. 7.

Exemption from association with labor organization on religious grounds, 39-31-204.

Health care facilities, 50-5-105.

Furnishing of medical assistance, 53-6-105.

49-1-103. Right to use force. Any necessary force may be used to protect from wrongful injury the person or property of one's self, of a wife, husband, child, parent, or other relative or member of one's family, or of a ward, servant, master, or guest.

History: En. Sec. 36, Civ. C. 1895; re-en. Sec. 3606, Rev. C. 1907; re-en. Sec. 5694, R.C.M. 1921; Cal. Civ. C. Sec. 50; Based on Field Civil C. Sec. 33; re-en. Sec. 5694, R.C.M. 1935; R.C.M. 1947, 64-210.

Cross-References

Justifiable use of force, Title 45, ch. 3.

Part 2

Basic Political Rights

Part Cross-References

Popular sovereignty, Art. II, sec. 1, Mont. Const.

Self-government, Art. II, sec. 2, Mont. Const.

Right of participation in government, Art. II, sec. 8, Mont. Const.

Right to know, Art. II, sec. 9, Mont. Const.

Right of suffrage, Art. II, sec. 13, Mont. Const.

Rights of the convicted, Art. II, sec. 28, Mont. Const.

Civilian control of the military, Art. II, sec. 32, Mont. Const.

Importation of armed persons, Art. II, sec. 33, Mont. Const.

Initiative and referendum, Art. III, sec. 4 through 6, Mont. Const.

Suffrage and elections, Art. IV, Mont. Const.

Initiative and referendum — local government, Art. XI, sec. 8, Mont. Const.

Right to vote — race, sex, poll tax, age 18, Amend. 15, 19, 24, 26, U.S. Const.

Citizenship, Title 1, ch. 1, part 4.

Public participation in governmental operations, Title 2, ch. 3.

Access to public records, 2-6-102, 2-6-104, 2-6-207, 2-6-307.

United States citizenship — naturalization records, 3-5-514.

United States citizenship — naturalization fees, 3-5-515.

Access to public records — docket of lobbyists, 5-7-202.

Public participation in municipal government, 7-1-4131, 7-1-4141 through 7-1-4143, 7-3-1218, 7-3-4323.

Access to municipal public records, 7-1-4144.

Duty of citizens to aid in law enforcement, 7-4-4303, 7-4-4304, 45-7-304.

Citizen participation — proposals of Interlocal Cooperation Commission, 7-11-225.

Participation in home guard, 10-1-701.

Elections, Title 13.

Qualifications of voters, 13-1-111, 13-2-206.

Rights of convicted persons, 46-18-801.

49-1-201. Right to state's protection. Every person while within the jurisdiction of this state is entitled to its protection.

History: En. Sec. 80, Pol. C. 1895; re-en. Sec. 33, Rev. C. 1907; re-en. Sec. 34, R.C.M. 1921; Cal. Pol. C. Sec. 54; re-en. Sec. 34, R.C.M. 1935; R.C.M. 1947, 83-401.

Cross-References

Powers of municipalities with general powers, 7-1-4123, 7-1-4124.

Spouse abuse, Title 40, ch. 2, part 4.

Child abuse, neglect, and dependency, Title 41, ch. 3.

49-1-202. Right to hold elected office. Every elector is eligible to the office for which he is an elector, except where otherwise specially provided.

History: En. Sec. 84, Pol. C. 1895; re-en. Sec. 37, Rev. C. 1907; re-en. Sec. 38, R.C.M. 1921; Cal. Pol. C. Sec. 58; re-en. Sec. 38, R.C.M. 1935; R.C.M. 1947, 83-405.

Cross-References

Qualifications of Legislators, Art. V, sec. 4, Mont. Const.

Qualifications of executive officers, Art. VI, sec. 3, Mont. Const.

Qualifications of judicial officers, Art. VII, sec. 9, Mont. Const.

Qualifications of U.S. Representatives, Art. I, sec. 2, U.S. Const.

Qualifications of U.S. Senators, Art. I, sec. 3, U.S. Const.

Qualifications of U.S. President, Art. II, sec. 1, U.S. Const.

No religious test to hold public office, Art. VI, U.S. Const.

Eligibility to hold civil office, 2-16-102.

Qualifications of voters, 13-1-111, 13-2-206.

49-1-203. Rights and duties of electors as compared to nonelectors. An elector has no rights or duties beyond those of a citizen not an elector, except the right and duty of holding and electing to office.

History: En. Sec. 85, Pol. C. 1895; re-en. Sec. 38, Rev. C. 1907; re-en. Sec. 39, R.C.M. 1921; Cal. Pol. C. Sec. 59; re-en. Sec. 39, R.C.M. 1935; R.C.M. 1947, 83-406.

49-1-204. Rights and duties of citizens of other states. A citizen of the United States who is not a citizen of this state has the same rights and duties as a citizen of this state not an elector.

History: En. Sec. 86, Pol. C. 1895; re-en. Sec. 39, Rev. C. 1907; re-en. Sec. 40, R.C.M. 1921; Cal. Pol. C. Sec. 60; re-en. Sec. 40, R.C.M. 1935; R.C.M. 1947, 83-407.

Cross-References

Privileges and immunities, Art. IV, sec. 2, U.S. Const.

Determination of residence, 1-1-215.

Qualifications of notary public, 1-5-402.

Qualifications for membership on licensing boards, 2-15-1841, 2-15-1842, 2-15-1844, 2-15-1851, 2-15-1873, 2-15-1881.

Qualifications for membership on agricultural research and marketing committees, 2-15-3002, 2-15-3103.

Membership on Judicial Standards Commission, 3-1-1101.

Right to initiate investigation of judicial officer, 3-1-1106.

Qualifications of Supreme Court Justice, 3-2-102.

Qualifications of District Court Judge, 3-5-202.

Qualifications of Justice of the Peace, 3-10-204.

Composition of juries, 3-15-101 through 3-15-105.

Membership on Districting and Apportionment Commission, 5-1-101.

Qualifications for county office, 7-4-2201.

Qualifications for district or township office, 7-4-2202.

Qualifications for County Attorney in large counties, 7-4-2701.

Qualifications for municipal office, 7-4-4104.

Permits for commercial timber harvest, 7-8-2609.

Qualifications of reserve police officers, 7-32-213.

Deferral of property taxes of Montana citizen serving in military, 10-1-606.

Participation in home guard, 10-1-701.

Eligibility for liquor license, 16-4-401.

Public contracts — preference to Montana bidders, 18-1-102.

Public contracts — preference to Montana labor, 18-2-403.

Participation in registration of heritage properties, 22-3-431.

Eligibility to be an auctioneer, 30-11-508, 30-11-509.

Banks — composition of board of directors, 32-1-322.

Building and loan associations — incorporators, 32-2-201.

Stock and mutual insurers — incorporators, 33-3-201.

Organization of fraternal benefit society, 33-7-201.

Qualifications for trustees of cemetery care funds, 35-20-302.

Qualifications of investigator, pharmacy regulation, 37-7-104.

Qualifications to be licensed as private investigator or patrol operator, 37-60-304.

Qualifications of attorneys, 37-61-202, 37-61-208.

Qualifications of highway patrolmen, 44-1-401.

Permit to carry concealed weapon, 45-8-319.

Eligibility to be a state coal mine inspector, 50-73-401.

Interstate Compact on Mental Health, 53-22-101.

Eligibility of railroad personnel to act as law officers, 69-14-1003.

Eligibility to serve on Natural Areas Advisory Council, 76-12-113.

Issuance of commercial permits for timber removal, 77-5-212.

Access to services of grain and seed laboratory, 80-5-110.

Policy toward nonresident big game hunters, 87-3-303.

Qualifications for outfitter's or professional guide's license, 87-4-122, 87-4-123.

CHAPTER 2

ILLEGAL DISCRIMINATION

Part 1 — General Provisions

Section

49-2-101. Definitions.
49-2-102. Records to be kept.

Part 2 — Commission for Human Rights

49-2-201. Commission staff.

49-2-202. Authority to require posted notice.
49-2-203. Subpoena power.
49-2-204. Commission to adopt rules.

Part 3 — Prohibited Discriminatory Practices

49-2-301. Retaliation prohibited.
49-2-302. Aiding, coercing, or attempting.
49-2-303. Discrimination in employment.
49-2-304. Discrimination in public accommodations.
49-2-305. Discrimination in housing.
49-2-306. Discrimination in financing and credit transactions.
49-2-307. Discrimination in education.
49-2-308. Discrimination by the state.
49-2-309. Discrimination in insurance and retirement plans.
49-2-310. Maternity leave — unlawful acts of employers.
49-2-311. Reinstatement to job following pregnancy-related leave of absence.

Part 4 — Exceptions to Prohibitions

49-2-401. Procedure for claiming exemption.
49-2-402. "Reasonable" to be strictly construed.
49-2-403. Specific limits on justification.
49-2-404. Distinctions permitted for modesty or privacy.
49-2-405. Veterans' and handicapped persons' employment preference.

Part 5 — Enforcement by Commission

49-2-501. Filing complaints.
49-2-502. Notification of and action by commission.
49-2-503. Temporary relief by court order.
49-2-504. Informal settlement.
49-2-505. Contested case hearing.
49-2-506. Procedure upon a finding of discrimination.
49-2-507. Procedure upon failure to find discrimination.
49-2-508. Enforcement of commission order.
49-2-509. Filing a complaint in district court.

Part 6 — Penalties

49-2-601. Criminal penalty.

Chapter Cross-References

Youth Conservation Corps age requirements as bona fide occupational qualification, 76-21-205.

Part 1

General Provisions

49-2-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Commission" means the commission for human rights provided for in 2-15-1706.

(3) "Credit" means the right granted by a creditor to a person to defer payment of a debt, to incur debt and defer its payment, or to purchase property or services and defer payment therefor. It includes without limitation the right to incur and defer debt which is secured by residential real property.

(4) "Credit transaction" means any invitation to apply for credit, application for credit, extension of credit, or credit sale.

(5) "Creditor" means a person who, regularly or as a part of his business, arranges for the extension of credit for which the payment of a financial charge or interest is required, whether in connection with loans, sale of property or services, or otherwise.

(6) "Educational institution" means a public or private institution and includes an academy; college; elementary or secondary school; extension course; kindergarten; nursery; school system; university; business, nursing, professional, secretarial, technical, or vocational school; or agent of an educational institution.

(7) "Employee" means any individual employed by an employer.

(8) "Employer" means an employer of one or more persons but does not include a fraternal, charitable, or religious association or corporation if the association or corporation is not organized either for private profit or to provide accommodations or services that are available on a nonmembership basis.

(9) "Employment agency" means a person undertaking to procure employees or opportunities to work.

(10) "Financial institution" means a commercial bank, trust company, savings bank, finance company, savings and loan association, investment company, or insurance company.

(11) "Housing accommodation" means a building or portion of a building, whether constructed or to be constructed, which is or will be used as the sleeping quarters of its occupants.

(12) "Labor organization" means an organization or an agent of an organization organized for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances or terms or conditions of employment, or of other mutual aid and protection of employees.

(13) "Mental handicap" means any mental disability resulting in subaverage intellectual functioning or impaired social competence.

(14) "National origin" means ancestry.

(15) "Person" means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees' associations, employers, employment agencies, or labor organizations.

(16) "Physical handicap" means a physical disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness, including epilepsy. It includes without limitation any degree of paralysis; amputation; lack of physical coordination; blindness or visual impediment; deafness or hearing impediment; muteness or speech impediment; or physical reliance on a guide dog for the blind, a wheelchair, or any other remedial appliance or device.

(17) "Public accommodation" means a place which caters or offers its services, goods, or facilities to the general public subject only to the conditions and limitations established by law and applicable to all persons alike. It includes without limitation a public inn, restaurant, eating house, hotel, roadhouse, place where food or alcoholic beverages or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern, nightclub, trailer park, resort, campground, barbershop, beauty parlor, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, or hospital and all other public amusement and business establishments.

(18) "Staff" or "commission staff" means the staff of the commission for human rights.

History: En. 64-305 by Sec. 1, Ch. 283, L. 1974; amd. Sec. 1, Ch. 121, L. 1975; amd. Sec. 2, Ch. 524, L. 1975; amd. Sec. 1, Ch. 35, L. 1977; R.C.M. 1947, 64-305; amd. Sec. 2, Ch. 177, L. 1979.

49-2-102. Records to be kept. The state, employers, labor organizations, and employment agencies shall maintain records on age, sex, and race that are required to administer the civil rights laws and regulations. These records are confidential and available only to federal and state personnel legally charged with administering civil rights laws and regulations. However, statistical information compiled from records on age, sex, and race shall be made available to the general public.

History: En. 64-306.1 by Sec. 4, Ch. 524, L. 1975; amd. Sec. 1, Ch. 27, L. 1977; R.C.M. 1947, 64-306.1(2).

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Access to public records, 2-6-102, 2-6-104, 2-6-207, 2-6-307.

Part 2

Commission for Human Rights

Part Cross-References

Membership, allocation, 2-15-1706.

49-2-201. Commission staff. (1) The staff may include an attorney as legal counsel. He shall advise the commission in legal matters arising in the discharge of its duties, assist in the preparation and presentation of complaints to the commission, and represent the commission in legal actions to which it is a party. The attorney general shall perform this function at the request of the commission.

(2) In addition the commission may appoint hearing examiners to hear contested cases and petitions for declaratory rulings.

History: (1)En. 64-311 by Sec. 8, Ch. 283, L. 1974; amd. Sec. 9, Ch. 524, L. 1975; Sec. 64-311, R.C.M. 1947;(2)En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; Sec. 64-308, R.C.M. 1947; R.C.M. 1947, 64-308(part), 64-311.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

49-2-202. Authority to require posted notice. The commission may require any employer, employment agency, labor union, educational institution, or financial institution or the owner, lessee, manager, agent, or employee of any public accommodation or housing accommodation subject to this chapter to post, in a conspicuous place on his premises or in the accommodation, a notice to be prepared or approved by the commission containing relevant information that the commission considers necessary to explain this chapter. Any person or institution subject to this section who refuses to comply with an order of the commission respecting the posting of a notice is guilty of a misdemeanor and punishable by a fine of not more than $50.

History: En. 64-314 by Sec. 12, Ch. 524, L. 1975; R.C.M. 1947, 64-314; amd. Sec. 3, Ch. 177, L. 1979.

49-2-203. Subpoena power. (1) The commission may subpoena witnesses, take the testimony of any person under oath, administer oaths, and, in connection therewith, require the production for examination of books, papers, or other tangible evidence relating to a matter either under investigation by the commission staff or in question before the commission. The commission may delegate the foregoing powers to a person within the staff for the purpose of investigating a complaint.

(2) Subpoenas issued pursuant to this section may be enforced as provided in 2-4-104 of the Montana Administrative Procedure Act.

History: En. 64-313 by Sec. 11, Ch. 524, L. 1975; R.C.M. 1947, 64-313.

49-2-204. Commission to adopt rules. The commission shall adopt procedural and substantive rules necessary to implement this chapter. Rulemaking procedures shall comply with the requirements of the Montana Administrative Procedure Act.

History: En. 64-315 by Sec. 13, Ch. 524, L. 1975; R.C.M. 1947, 64-315.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Part 3

Prohibited Discriminatory Practices

Part Cross-References

No discrimination based on evaluation or treatment relating to mental illness, 53-21-189.

49-2-301. Retaliation prohibited. It is an unlawful discriminatory practice for a person, educational institution, financial institution, or governmental entity or agency to discharge, expel, blacklist, or otherwise discriminate against an individual because he has opposed any practices forbidden under this chapter or because he has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter.

History: Ap.p. Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; Sec. 64-306, R.C.M. 1947; Ap.p. Sec. 9, Ch. 283, L. 1974; amd. Sec. 10, Ch. 524, L. 1975; Sec. 64-312, R.C.M. 1947; R.C.M. 1947, 64-306(9), 64-312(2); amd. Sec. 4, Ch. 177, L. 1979.

49-2-302. Aiding, coercing, or attempting. It is unlawful for a person, educational institution, financial institution, or governmental entity or agency to aid, abet, incite, compel, or coerce the doing of an act forbidden under this chapter or to attempt to do so.

History: En. 64-312 by Sec. 9, Ch. 283, L. 1974; amd. Sec. 10, Ch. 524, L. 1975; R.C.M. 1947, 64-312(1); amd. Sec. 5, Ch. 177, L. 1979.

Cross-References

When accountability exists, 45-2-302.

Inchoate offenses, Title 45, ch. 4.

49-2-303. Discrimination in employment. (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his race, creed, religion, color, or national origin or because of his age, physical or mental handicap, marital status, or sex when the reasonable demands of the position do not require an age, physical or mental handicap, marital status, or sex distinction;

(b) a labor organization or joint labor management committee controlling apprenticeship to exclude or expel any person from its membership or from an apprenticeship or training program or to discriminate in any way against a member of or an applicant to the labor organization or an employer or employee because of race, creed, religion, color, or national origin or because of his age, physical or mental handicap, marital status, or sex when the reasonable demands of the program do not require an age, physical or mental handicap, marital status, or sex distinction;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication or to use an employment application which expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to discriminate against any individual because of sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

(2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications shall be strictly construed.

(3) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(1), (2); amd. Sec. 1, Ch. 279, L. 1983; amd. Sec. 1, Ch. 342, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (3).

1983 Amendment: In (1)(a) and (1)(b), allowed marital status discrimination when the reasonable demands of the position covered by (a) or the program covered by (b) require an age distinction by deleting one reference to "marital status" before "or because of" and inserting two references after that phrase.

Cross-References

Work-study program, 20-25-707.

Equal pay for women for equivalent service, 39-3-104.

Exclusion of handicapped from minimum wage and overtime compensation laws, 39-3-406.

Women in employment, Title 39, ch. 7.

Exemption from association with labor organization on religious grounds, 39-31-204.

Right to refuse to participate in sterilization, Title 50, ch. 5, part 5.

Right to refuse to participate in abortion, 50-20-111.

49-2-304. Discrimination in public accommodations. Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, agent, or employee of a public accommodation:

(1) to refuse, withhold from, or deny to a person any of its services, goods, facilities, advantages, or privileges because of sex, race, age, physical or mental handicap, creed, religion, color, or national origin;

(2) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any of the services, goods, facilities, advantages, or privileges of the public accommodation will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, age, physical or mental handicap, color, or national origin.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(3).

Cross-References

Health care facilities, 50-5-105.

Furnishing of medical assistance, 53-6-105.

Opportunity for religious observance in facilities for developmentally disabled, 53-20-142.

Opportunity for religious observance in mental health facilities, 53-21-142.

49-2-305. Discrimination in housing. (1) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, or other person having the right to sell, lease, or rent a housing accommodation or improved or unimproved property:

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, race, creed, religion, color, age, physical or mental handicap, or national origin;

(b) to discriminate against a person because of sex, race, creed, religion, age, physical or mental handicap, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of the housing accommodation or property;

(c) to make a written or oral inquiry or record of the sex, race, creed, religion, age, physical or mental handicap, color, or national origin of a person seeking to buy, lease, or rent the housing accommodation or property; or

(d) to refuse to negotiate for a sale or to make a housing accommodation or property unavailable because of sex, race, creed, religion, age, physical or mental handicap, color, or national origin.

(2) A private residence designed for single-family occupancy in which sleeping space is rented to guests and in which the landlord also resides is excluded from the provisions of subsection (1).

(3) It is also an unlawful discriminatory practice to make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement that indicates any preference, limitation, or discrimination that is prohibited by subsection (1) or any intention to make or have such a preference, limitation, or discrimination.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(4); amd. Sec. 6, Ch. 177, L. 1979; amd. Sec. 1, Ch. 335, L. 1981.

Compiler's Comments

1981 Amendment: Inserted subsection (1)(d); substituted "subsection (1)" for "this section" at the end of (2); added subsection (3).

Cross-References

Urban renewal, 7-15-4207.

49-2-306. Discrimination in financing and credit transactions. (1) It is an unlawful discriminatory practice for a financial institution, upon receiving an application for financial assistance, to permit an official or employee, during the execution of his duties, to discriminate against the applicant because of sex, marital status, race, creed, religion, age, physical or mental handicap, color, or national origin in a term, condition, or privilege relating to the obtainment or use of the institution's financial assistance, unless based on reasonable grounds.

(2) It is an unlawful discriminatory practice for a creditor to discriminate on the basis of race, color, religion, creed, national origin, age, mental or physical handicap, sex, or marital status against any person in any credit transaction which is subject to the jurisdiction of any state or federal court of record.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(5), (8).

Cross-References

State District Court jurisdiction, Title 3, ch. 5, part 3.

Municipal Court jurisdiction, 3-6-103.

Power to contract, Title 28, ch. 2, part 2.

No discrimination by certain insurers, 33-18-210.

Medical and health insurance — continuation of coverage for handicapped child, 33-22-304, 33-22-506, 33-30-1003, 33-30-1004.

Minors' power to contract, Title 41, ch. 1, part 3.

49-2-307. Discrimination in education. It is an unlawful discriminatory practice for an educational institution:

(1) to exclude, expel, limit, or otherwise discriminate against an individual seeking admission as a student or an individual enrolled as a student in the terms, conditions, or privileges of the institution because of race, creed, religion, sex, marital status, color, age, physical handicap, or national origin or because of mental handicap, unless based on reasonable grounds;

(2) to make or use a written or oral inquiry or form of application for admission that elicits or attempts to elicit information or to make or keep a record concerning the race, color, sex, marital status, age, creed, religion, physical or mental handicap, or national origin of an applicant for admission, except as permitted by regulations of the commission;

(3) to print, publish, or cause to be printed or published a catalog or other notice or advertisement indicating a limitation, specification, or discrimination based on the race, color, creed, religion, age, physical or mental handicap, sex, marital status, or national origin of an applicant for admission; or

(4) to announce or follow a policy of denial or limitation of educational opportunities of a group or its members, through a quota or otherwise, because of race, color, sex, marital status, age, creed, religion, physical or mental handicap, or national origin.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(7).

Cross-References

Nondiscrimination in education, Art. X, sec. 7, Mont. Const.

Exemption from immunization requirements on religious grounds, 20-5-405.

49-2-308. Discrimination by the state. It is an unlawful discriminatory practice for the state or any of its political subdivisions:

(1) to refuse, withhold from, or deny to a person any local, state, or federal funds, services, goods, facilities, advantages, or privileges because of race, creed, religion, sex, marital status, color, age, physical or mental handicap, or national origin, unless based on reasonable grounds;

(2) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any local, state, or federal funds, services, goods, facilities, advantages, or privileges of the office or agency will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, marital status, color, age, physical or mental handicap, or national origin or that the patronage of a person of a particular race, creed, religion, sex, marital status, color, age, or national origin or possessing a physical or mental handicap is unwelcome or not desired or solicited, unless based on reasonable grounds;

(3) to refuse employment to a person, to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his political beliefs. However, this prohibition does not apply to policymaking positions on the immediate staff of an elected officer of the executive branch provided for in Article VI, section 1, of the Montana constitution, to the appointment by the governor of a director of a principal department provided for in Article VI, section 7, of the Montana constitution, or to the immediate staff of the majority and minority leadership of the Montana legislature.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(6).

Cross-References

Special consideration for military personnel and veterans, Art. II, sec. 35, Mont. Const.

Executive branch officers and agencies, Title 2, ch. 15.

Classified service employees — municipal commission-manager government, 7-3-4415.

Sex discrimination — records of military discharges, 7-4-2614.

Urban renewal, 7-15-4207.

Employment by county Board of Park Commissioners, 7-16-2326.

Use of hospital district facilities, 7-34-2123.

Veterans' benefits, Title 10, ch. 2, part 3.

Sheltered workshops — public contracts to purchase, Title 18, ch. 5, part 1.

Special education supervisor, 20-3-103.

Exemption from school immunization requirements on religious grounds, 20-5-405.

Special education for exceptional children, Title 20, ch. 7, part 4.

Educational programs for gifted children, Title 20, ch. 7, part 9.

State School for the Deaf and Blind, Title 20, ch. 8.

Work-study program, 20-25-707.

Library services for the handicapped, 22-1-103.

Religious beliefs of witness not relevant to credibility, Rule 610, Montana Rules of Evidence (see Title 26, ch. 10).

Marital status irrelevant to parent-child relationship, 40-6-103.

Right to refuse to participate in sterilization, Title 50, ch. 5, part 5.

Exemption from prenatal blood tests on religious grounds, 50-19-109.

Right to refuse to participate in abortion, 50-20-111.

Furnishing of medical assistance, 53-6-105.

Community-based services for developmentally disabled, 53-20-212.

Community mental health centers, 53-21-206.

Ineligibility of handicapped for driver's license, 61-5-105.

Homestead exemption, Title 70, ch. 32, part 2.

Surviving spouse exempt from inheritance tax, 72-16-313.

Exceptions to fishing and hunting license requirements, Title 87, ch. 2, part 8.

49-2-309. Discrimination in insurance and retirement plans. (1) It is an unlawful discriminatory practice for any financial institution or person to discriminate solely on the basis of sex or marital status in the issuance or operation of any type of insurance policy, plan, or coverage or in any pension or retirement plan, program, or coverage, including discrimination in regard to rates or premiums and payments or benefits.

(2) This section does not apply to any insurance policy, plan, coverage, or any pension or retirement plan, program, or coverage in effect prior to October 1, 1985.

History: En. Secs. 1, 3, Ch. 531, L. 1983.

49-2-310. Maternity leave — unlawful acts of employers. It shall be unlawful for an employer or his agent to:

(1) terminate a woman's employment because of her pregnancy;

(2) refuse to grant to the employee a reasonable leave of absence for such pregnancy;

(3) deny to the employee who is disabled as a result of pregnancy any compensation to which she is entitled as a result of the accumulation of disability or leave benefits accrued pursuant to plans maintained by her employer, provided that the employer may require disability as a result of pregnancy to be verified by medical certification that the employee is not able to perform her employment duties; or

(4) require that an employee take a mandatory maternity leave for an unreasonable length of time.

History: En. 41-2602 by Sec. 2, Ch. 320, L. 1975; R.C.M. 1947, 41-2602(1); amd. Sec. 1, Ch. 285, L. 1983; MCA 1981, 39-7-203; redes. 49-2-310 by Sec. 2, Ch. 285, L. 1983.

Compiler's Comments

1983 Amendment: Deleted former (4), which read: "retaliate against any employee who files a complaint with the commissioner under the provisions of this part".

49-2-311. Reinstatement to job following pregnancy-related leave of absence. Upon signifying her intent to return at the end of her leave of absence, such employee shall be reinstated to her original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits, and other service credits unless, in the case of a private employer, the employer's circumstances have so changed as to make it impossible or unreasonable to do so.

History: En. 41-2602 by Sec. 2, Ch. 320, L. 1975; R.C.M. 1947, 41-2602(2); MCA 1981, 39-7-204; redes. 49-2-311 by Sec. 2, Ch. 285, L. 1983.

Part 4

Exceptions to Prohibitions

49-2-401. Procedure for claiming exemption. A person, educational institution, financial institution, or governmental entity or agency who or which seeks to be exempted from the requirements of part 3 of this chapter may petition the commission for a declaratory ruling as provided in 2-4-501 of the Montana Administrative Procedure Act. If the commission finds that reasonable grounds for granting an exemption exist, it may issue a ruling exempting the petitioner from the particular provision. This section, however, shall be strictly construed, and the burden is on the petitioner to demonstrate that an exemption should be granted.

History: En. 64-306.1 by Sec. 4, Ch. 524, L. 1975; amd. Sec. 1, Ch. 27, L. 1977; R.C.M. 1947, 64-306.1(1); amd. Sec. 7, Ch. 177, L. 1979.

49-2-402. "Reasonable" to be strictly construed. Any grounds urged as a "reasonable" basis for an exemption under any section of this chapter shall be strictly construed.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(10).

49-2-403. Specific limits on justification. (1) Except as permitted in 49-2-303(3) and 49-3-201(5), sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin may not comprise justification for discrimination unless the nature of the service requires the discrimination for the legally demonstrable purpose of correcting a previous discriminatory practice.

(2) Age or mental handicap may represent a legitimate discriminatory criterion in credit transactions only as it relates to a person's capacity to make or be bound by contracts or other obligations.

History: En. 64-307 by Sec. 3, Ch. 283, L. 1974; amd. Sec. 3, Ch. 121, L. 1975; amd. Sec. 5, Ch. 524, L. 1975; amd. Sec. 8, Ch. 38, L. 1977; R.C.M. 1947, 64-307(1), (2); amd. Sec. 2, Ch. 342, L. 1985.

Compiler's Comments

1985 Amendment: At beginning inserted exception clause.

Cross-References

Power to contract, Title 28, ch. 2, part 2.

Minors' power to contract, Title 41, ch. 1, part 3.

49-2-404. Distinctions permitted for modesty or privacy. Separate lavatory, bathing, or dressing facilities based on the distinction of sex may be maintained for the purpose of modesty or privacy.

History: En. 64-307 by Sec. 3, Ch. 283, L. 1974; amd. Sec. 3, Ch. 121, L. 1975; amd. Sec. 5, Ch. 524, L. 1975; amd. Sec. 8, Ch. 38, L. 1977; R.C.M. 1947, 64-307(3).

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

49-2-405. Veterans' and handicapped persons' employment preference. The application of an employment preference as provided for in Title 39, chapter 30, and 10-2-402 by a public employer as defined in 39-30-103 may not be construed to constitute a violation of this chapter.

History: En. Sec. 12, Ch. 1, Sp. L. 1983.

Part 5

Enforcement by Commission

49-2-501. Filing complaints. (1) A complaint may be filed by or on behalf of any person claiming to be aggrieved by any discriminatory practice prohibited by this chapter. The complaint must be in the form of a written, verified complaint stating the name and address of the person, educational institution, financial institution, or governmental entity or agency alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice. The commission staff may file a complaint in like manner when a discriminatory practice comes to its attention.

(2) A complaint under this chapter must be filed with the commission within 180 days after the alleged unlawful discriminatory practice occurred or

was discovered. Any complaint not filed within the time set forth herein may not be considered by the commission.

History: En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(1); amd. Sec. 8, Ch. 177, L. 1979.

49-2-502. Notification of and action by commission. The staff shall notify the commission in writing of all complaints filed with the commission. The commission shall meet a minimum of four times a year to hear and act upon all complaints filed.

History: En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(part).

49-2-503. Temporary relief by court order. (1) At any time after a complaint is filed under this chapter alleging an unlawful discriminatory practice, the commission may file a petition in the district court in the county in which the subject of the complaint occurs or in the county in which a respondent resides or transacts business seeking appropriate temporary relief against this practice, including an order restraining the respondent from interfering in any manner with an order the commission may enter with respect to the complaint.

(2) The court has the power to grant the temporary relief or restraining order it considers just and proper. However, no relief or order extending beyond 14 days may be granted except by consent of the respondent or upon a finding by the court that there is reasonable cause to believe that the respondent has engaged in discriminatory practices.

History: En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(3).

Cross-References

Injunctions, Title 27, ch. 19.

49-2-504. Informal settlement. The commission staff shall informally investigate the matters set out in a filed complaint promptly and impartially. If the staff determines that the allegations are supported by substantial evidence, it shall immediately try to eliminate the discriminatory practice by conference, conciliation, and persuasion.

History: En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(4).

49-2-505. Contested case hearing. (1) If the informal efforts to eliminate the alleged discrimination are unsuccessful, the staff shall inform the commission of the failure and the commission shall cause written notice to be served, together with a copy of the complaint, requiring the person, educational institution, financial institution, or governmental entity or agency charged in the complaint to answer the allegations of the complaint at a hearing before the commission.

(2) The hearing must be held by the commission in the county where the unlawful conduct is alleged to have occurred unless the person, institution, entity, or agency charged in the complaint or the commission requests a change of venue for good cause shown. The case in support of the complaint may be presented before the commission by the staff, the complainant, or an

attorney representing the complainant. The hearing and any subsequent proceedings under this chapter must be held in accordance with the Montana Administrative Procedure Act except as provided in 49-2-508.

(3) The commission may make provisions for defraying the expenses of an indigent party in a contested case hearing held pursuant to this chapter.

(4) The prevailing party in a hearing under this section may bring an action in district court for attorneys' fees. The court in its discretion may allow the prevailing party reasonable attorneys' fees. An action under this section must comply with the Montana Rules of Civil Procedure.

History: En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(5), (6); amd. Sec. 9, Ch. 177, L. 1979; amd. Sec. 1, Ch. 709, L. 1979.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Montana Rules of Civil Procedure, Title 25, ch. 20.

49-2-506. Procedure upon a finding of discrimination. (1) If the commission finds that a person, institution, entity, or agency against whom a complaint was filed has engaged in the discriminatory practice alleged in the complaint, the commission shall order him or it to refrain from engaging in the discriminatory conduct. The order may:

(a) prescribe conditions on the accused's future conduct relevant to the type of discriminatory practice found;

(b) require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against;

(c) require a report on the manner of compliance.

(2) The order may not require the payment of any punitive damages.

(3) Whenever a commission order or conciliation agreement requires inspection by the commission staff for a period of time to determine if the respondent is complying with that order or agreement, the period of time may not be more than 3 years.

History: En. 64-309 by Sec. 6, Ch. 283, L. 1974; amd. Sec. 7, Ch. 524, L. 1975; R.C.M. 1947, 64-309(1), (2), (4); amd. Sec. 10, Ch. 177, L. 1979.

49-2-507. Procedure upon failure to find discrimination. If the commission finds that a person, institution, entity, or agency against whom or which a complaint was filed has not engaged in the discriminatory practice alleged in the complaint, it shall issue and cause to be served on the complainant an order dismissing the complaint.

History: En. 64-309 by Sec. 6, Ch. 283, L. 1974; amd. Sec. 7, Ch. 524, L. 1975; R.C.M. 1947, 64-309(3); amd. Sec. 11, Ch. 177, L. 1979.

49-2-508. Enforcement of commission order. If the commission's order is not obeyed, the commission staff or a party may petition the district court in the county where the discriminatory practice occurred or in which the respondent resides or transacts business to enforce the commission's order by any appropriate order.

History: En. 64-310 by Sec. 7, Ch. 283, L. 1974; amd. Sec. 8, Ch. 524, L. 1975; R.C.M. 1947, 64-310; amd. Sec. 1, Ch. 539, L. 1985.

Compiler's Comments

1985 Amendment — Applicability: In second clause, after "staff", deleted "shall" and inserted "or a party may"; and at end after "order", substituted "by any appropriate order" for "by injunction".

Section 3(2), Ch. 539, L. 1985, provided: "This act applies to cases pending with the commission for human rights or the district court on its effective date and to cases filed with the commission for human rights on or after its effective date (effective April 18, 1985)."

Cross-References
Injunctions, Title 27, ch. 19.

49-2-509. Filing a complaint in district court. (1) The commission staff shall, at the request of either party, issue a letter entitling the complainant to file a discrimination action in district court if:

(a) the commission has not yet held a contested case hearing pursuant to 49-2-505 and has determined that it will be unable to hold a contested case hearing within 12 months of the date the complaint was filed under 49-2-501; and

(b) 180 days have elapsed since the complaint was filed and the efforts of the commission staff to settle the complaint after informal investigation pursuant to 49-2-504 have been unsuccessful.

(2) Within 90 days after receipt of a letter issued by the commission pursuant to subsection (1), the complainant shall petition the district court in the district in which the alleged violation occurred for appropriate relief. If the claimant fails to petition the district court within 90 days after receipt of a letter issued by the commission, the claim shall be barred.

(3) If the district court finds, in an action under this section, that a person, institution, entity, or agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice alleged in the complaint, the court may provide the same relief as described in 49-2-506 for a commission order. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees.

History: En. Sec. 1, Ch. 505, L. 1983.

Part 6

Penalties

49-2-601. Criminal penalty. A person, educational institution, or financial institution, either public or private, or a governmental entity or agency who or which willfully engages in an unlawful discriminatory practice prohibited by this chapter or willfully resists, prevents, impedes, or interferes with the commission, the department, or any of its authorized representatives in the performance of a duty under this chapter or who or which willfully violates an order of the commission or willfully violates this chapter in any other manner is guilty of a misdemeanor and is punishable by a fine of not more than $500 or by imprisonment for not more than 6 months, or both.

History: En. 64-312 by Sec. 9, Ch. 283, L. 1974; amd. Sec. 10, Ch. 524, L. 1975; R.C.M. 1947, 64-312(3); amd. Sec. 12, Ch. 177, L. 1979.

Cross-References
Place of imprisonment, 46-18-211.

CHAPTER 3

GOVERNMENTAL CODE OF FAIR PRACTICES

Part 1 — General Provisions

Section
49-3-101. Definitions.
49-3-102. What local governmental units affected.

49-3-103. Permitted distinctions.
49-3-104. Quotas not required.
49-3-105. Procedure for claiming exemption.
49-3-106. Rulemaking authority.

Part 2 — Duties of Governmental Agencies and Officials

49-3-201. Employment of state and local government personnel.
49-3-202. Employment referrals and placement services.
49-3-203. Educational, counseling, and training programs.
49-3-204. Licensing.
49-3-205. Governmental services.
49-3-206. Distribution of governmental funds.
49-3-207. Nondiscrimination provision in all public contracts.
49-3-208. Public accommodations laws.
49-3-209. Retaliation prohibited.

Part 3 — Enforcement and Remedies

49-3-301. Cooperation with commission for human rights.
49-3-302. Annual reports to governor.
49-3-303. Repealed.
49-3-304. Filing complaints.
49-3-305. Form of complaint.
49-3-306. Temporary relief by court order.
49-3-307. Informal settlement.
49-3-308. Contested case hearing before commission.
49-3-309. Procedure upon a finding of discrimination by commission.
49-3-310. Procedure upon failure by commission to find discrimination.
49-3-311. Enforcement of commission order.
49-3-312. Filing a complaint in district court.

Chapter Cross-References

Special consideration for military personnel and veterans, Art. II, sec. 35, Mont. Const.

Variation of oath to suit witness' belief, 1-6-103.

Religious beliefs of witness not relevant to credibility, Rule 610, Montana Rules of Evidence (see Title 26, ch. 10).

Marital status irrelevant to parent-child relationship, 40-6-103.

No discrimination based on evaluation or treatment relating to mental illness, 53-21-189.

Youth Conservation Corps age requirements as bona fide occupational qualification, 76-21-205.

Part 1

General Provisions

49-3-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility, which may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Commission" means the commission for human rights provided for in 2-15-1706.

(3) "Mental handicap" means any mental disability resulting in subaverage intellectual functioning or impaired social competence.

(4) "Physical handicap" means a physical disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect,

or illness, including epilepsy. It includes without limitation any degree of paralysis; amputation; lack of physical coordination; blindness or visual impediment; deafness or hearing impediment; muteness or speech impediment; or physical reliance on a guide dog for the blind, a wheelchair, or any other remedial appliance or device.

(5) "State or local governmental agency" means:

(a) any branch, department, office, board, bureau, commission, agency, university unit, college, or other instrumentality of state government; or

(b) a county, city, town, school district, or other unit of local government and any instrumentality of local government.

(6) "Qualifications" means such qualifications as are genuinely related to competent performance of the particular occupational task.

History: (1)En. 64-316 by Sec. 1, Ch. 487, L. 1975; Sec. 64-316, R.C.M. 1947; (2)En. 64-319 by Sec. 4, Ch. 487, L. 1975; amd. Sec. 11, Ch. 38, L. 1977; Sec. 64-319, R.C.M. 1947; R.C.M. 1947, 64-316, 64-319(part); amd. Sec. 13, Ch. 177, L. 1979; amd. Sec. 1, Ch. 540, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (1) through (4); and rephrased (5), leaving substance the same.

49-3-102. What local governmental units affected. Local governmental units affected by this chapter include all political subdivisions of the state, including school districts.

History: En. 64-327 by Sec. 12, Ch. 487, L. 1975; R.C.M. 1947, 64-327.

Cross-References

Applicability to community college districts, 20-15-403.

49-3-103. Permitted distinctions. (1) Nothing in this chapter shall prohibit any public or private employer:

(a) from enforcing a differentiation based on marital status, age, or physical or mental handicap when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors other than age;

(b) from observing the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire any individual; or

(c) from discharging or otherwise disciplining an individual for good cause.

(2) The application of an employment preference as provided for in Title 39, chapter 30, and 10-2-402 by a public employer as defined in 39-30-103 may not be construed to constitute a violation of this chapter.

History: En. 64-328 by Sec. 13, Ch. 487, L. 1975; R.C.M. 1947, 64-328; amd. Sec. 2, Ch. 279, L. 1983; (2) En. Sec. 13, Ch. 1, Sp. L. 1983.

Compiler's Comments

1983 Special Session Enactment: Subsection (2) was enacted as a separate section by Ch. 1, Sp. L. 1983. It is codified as subsection (2) of this section for convenience and logical organization.

1983 Regular Session Amendment: In (1) (now (1)(a)), inserted "marital status".

49-3-104. Quotas not required. Nothing in this chapter shall be construed as requiring the institution of a system of quotas for representation of any sex, age, religious, racial, ethnic, or other group affected by this chapter.

History: En. 64-330 by Sec. 15, Ch. 487, L. 1975; R.C.M. 1947, 64-330.

49-3-105. Procedure for claiming exemption. A state or local governmental agency seeking to apply any exemption from the requirements of this chapter may petition the commission for a declaratory ruling as provided in 2-4-501 of the Montana Administrative Procedure Act. If the commission finds that reasonable grounds for applying an exemption exist, it may issue a ruling exempting the petitioner from the particular provision. The burden is on the petitioner to demonstrate that an exemption should be applied. Any provision in this chapter allowing an exemption from its requirements must be strictly construed.

History: En. Sec. 4, Ch. 540, L. 1983.

49-3-106. Rulemaking authority. The commission may adopt rules necessary for the implementation of this chapter, in accordance with the Montana Administrative Procedure Act. The rules may include but are not limited to procedural rules for:

(1) filing of complaints;

(2) conducting investigations of complaints;

(3) petitioning for a declaratory ruling, as provided in 49-3-105; and

(4) conduct of hearings.

History: En. Sec. 2, Ch. 540, L. 1983.

Part 2

Duties of Governmental Agencies and Officials

49-3-201. Employment of state and local government personnel. (1) State and local government officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

(2) All state and local governmental agencies shall:

(a) promulgate written directives to carry out this policy and to guarantee equal employment opportunities at all levels of state and local government;

(b) regularly review their personnel practices to assure compliance; and

(c) conduct continuing orientation and training programs with emphasis on human relations and fair employment practices.

(3) The department of administration shall insure that the entire examination process, including appraisal of qualifications, is free from bias.

(4) Appointing authorities shall exercise care to insure utilization of minority group persons.

(5) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section.

History: En. 64-317 by Sec. 2, Ch. 487, L. 1975; amd. Sec. 9, Ch. 38, L. 1977; R.C.M. 1947, 64-317; amd. Sec. 14, Ch. 177, L. 1979; amd. Sec. 3, Ch. 342, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (5).

Cross-References

Classified service employees — municipal commission-manager government, 7-3-4415.

Employment by county Board of Park Commissioners, 7-16-2326.

Employment of veterans, Title 10, ch. 2, part 2.

Work-study program, 20-25-707.

Equal pay for women for equivalent service, 39-3-104.

Exclusion of handicapped from minimum wage and overtime compensation laws, 39-3-406.

Women in employment, Title 39, ch. 7.

Veterans' and handicapped persons' public employment preference, Title 39, ch. 30.

Exemption from association with labor organization on religious grounds, 39-31-204.

Right to refuse to participate in sterilization, Title 50, ch. 5, part 5.

Right to refuse to participate in abortion, 50-20-111.

49-3-202. Employment referrals and placement services. (1) All state and local governmental agencies, including educational institutions, which provide employment referrals or placement services to public or private employers shall accept job orders on a fair practice basis. A job request indicating an intention to exclude a person because of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin shall be rejected.

(2) All state and local governmental agencies shall cooperate in programs developed by the commission for human rights for the purpose of broadening the base of job recruitment and shall further cooperate with employers and unions providing such programs.

(3) The department of labor and industry shall cooperate with the commission for human rights in encouraging and enforcing compliance by employers and labor unions with the policy of this chapter and promotion of equal employment opportunities.

History: En. 64-320 by Sec. 5, Ch. 487, L. 1975; amd. Sec. 12, Ch. 38, L. 1977; R.C.M. 1947, 64-320.

49-3-203. Educational, counseling, and training programs. All educational, counseling, and vocational guidance programs and all apprenticeship and on-the-job training programs of state and local governmental agencies or in which state and local governmental agencies participate must be open to all persons, who must be accepted on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin. Such programs must be conducted to encourage the full development of the interests, aptitudes, skills, and capacities of all students and trainees, with special attention to the problems of culturally deprived, educationally handicapped, or economically disadvantaged persons. Expansion of training opportunities under these programs must be encouraged to involve larger numbers of participants from those segments of the labor force in which the need for upgrading levels of skill is greatest.

History: En. 64-323 by Sec. 8, Ch. 487, L. 1975; amd. Sec. 14, Ch. 38, L. 1977; R.C.M. 1947, 64-323; amd. Sec. 15, Ch. 177, L. 1979.

Cross-References

No aid to sectarian schools, Art. X, sec. 6, Mont. Const.

Nondiscrimination in education, Art. X, sec. 7, Mont. Const.

Free tuition for veterans, 10-2-311 through 10-2-314.

Special education supervisor, 20-3-103.

Exemption from immunization requirements on religious grounds, 20-5-405.

Special education for exceptional children, Title 20, ch. 7, part 4.

Educational programs for gifted children, Title 20, ch. 7, part 9.

State School for the Deaf and Blind, Title 20, ch. 8.

Exemption from barber apprenticeship fees, 37-30-307.

Exemption from cosmetology examination and fees, 37-31-308.

49-3-204. Licensing. No state or local governmental agency may grant, deny, or revoke the license or charter of a person on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin. Each state or local governmental agency shall take such appropriate action in the exercise of its licensing or regulatory power as will assure equal treatment of all persons, eliminate discrimination, and enforce compliance with the policy of this chapter.

History: En. 64-321 by Sec. 6, Ch. 487, L. 1975; amd. Sec. 13, Ch. 38, L. 1977; R.C.M. 1947, 64-321; amd. Sec. 16, Ch. 177, L. 1979.

Cross-References

Restrictions on licensing of former criminal offenders, 23-4-201, 23-5-322, 23-5-422, 32-2-409, 37-1-201 through 37-1-205, 87-4-122, 87-4-141.

Professions and Occupations, Title 37.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Exemptions from licensure as physician — Christian Science practitioners and mohels, 37-3-103.

Licensing and standards for spiritual healing institutions, 50-5-104.

Special license plates for disabled veterans, handicapped persons, and ex-prisoners of war, 61-3-444 through 61-3-447, 61-3-451 through 61-3-453.

Ineligibility of handicapped for driver's license, 61-5-105.

Exceptions to fishing and hunting license requirements, Title 87, ch. 2, part 8.

49-3-205. Governmental services. (1) All services of every state or local governmental agency must be performed without discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

(2) No state or local facility may be used in the furtherance of any discriminatory practice, nor may a state or local governmental agency become a party to an agreement, arrangement, or plan which has the effect of sanctioning discriminatory practices.

(3) Each state or local governmental agency shall analyze all of its operations to ascertain possible instances of noncompliance with the policy of this chapter and shall initiate comprehensive programs to remedy any defect found to exist.

History: En. 64-318 by Sec. 3, Ch. 487, L. 1975; amd. Sec. 10, Ch. 38, L. 1977; R.C.M. 1947, 64-318; amd. Sec. 17, Ch. 177, L. 1979.

Cross-References

Sex discrimination — records of military discharges, 7-4-2614.

Urban renewal, 7-15-4207.

Use of hospital district facilities, 7-34-2123.

Library services for the handicapped, 22-1-103.

Health care facilities, 50-5-105.

Exemption from prenatal blood tests on religious grounds, 50-19-109.

Furnishing of medical assistance, 53-6-105.

Opportunity for religious observance in facilities for developmentally disabled, 53-20-142.

Community-based services for developmentally disabled, 53-20-212.

Opportunity for religious observance in mental health facilities, 53-21-142.

Community mental health centers, 53-21-206.

49-3-206. Distribution of governmental funds. Race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin may not be considered as limiting factors with regard to applicants' qualifications for benefits authorized by law in state or locally administered programs involving the distribution of funds; nor may state agencies provide grants, loans, or other financial assistance to public agencies, private institutions, or organizations which engage in discriminatory practices.

History: En. 64-324 by Sec. 9, Ch. 487, L. 1975; amd. Sec. 15, Ch. 38, L. 1977; R.C.M. 1947, 64-324.

Cross-References

Furnishing of medical assistance, 53-6-105.

49-3-207. Nondiscrimination provision in all public contracts. Every state or local contract or subcontract for construction of public buildings or for other public work or for goods or services shall contain a provision that all hiring must be on the basis of merit and qualifications and a provision that there may be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin by the persons performing the contract.

History: En. 64-319 by Sec. 4, Ch. 487, L. 1975; amd. Sec. 11, Ch. 38, L. 1977; R.C.M. 1947, 64-319(part); amd. Sec. 18, Ch. 177, L. 1979.

Cross-References

Urban renewal, 7-15-4207.

Sheltered workshops — public contracts to purchase, Title 18, ch. 5, part 1.

49-3-208. Public accommodations laws. No state or local governmental agency may permit any violation of the public accommodations provisions of 49-2-304.

History: En. 64-322 by Sec. 7, Ch. 487, L. 1975; R.C.M. 1947, 64-322; amd. Sec. 19, Ch. 177, L. 1979.

49-3-209. Retaliation prohibited. It is an unlawful discriminatory practice for a state or local governmental agency to discharge, expel, blacklist, or otherwise discriminate against an individual because he has opposed any practices forbidden under this chapter or because he has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter.

History: En. Sec. 3, Ch. 540, L. 1983.

Part 3

Enforcement and Remedies

49-3-301. Cooperation with commission for human rights. All state and local governmental agencies shall cooperate with the commission for human rights in the commission's enforcement and educational programs. They shall comply with the commission's requests for information concerning practices inconsistent with the state policy against discrimination and shall consider its recommendations for effectuating and implementing that policy. The commission shall continue to augment its enforcement and educational programs which seek to eliminate all discrimination.

History: En. 64-325 by Sec. 10, Ch. 487, L. 1975; R.C.M. 1947, 64-325; amd. Sec. 20, Ch. 177, L. 1979.

49-3-302. Annual reports to governor. All state governmental agencies which report to the governor shall include in their annual reports to the governor activities undertaken in the past year to effectuate this chapter. Such reports shall cover both internal activities and external relations with the public or with other state agencies and shall contain other information as specifically requested by the governor.

History: En. 64-326 by Sec. 11, Ch. 487, L. 1975; R.C.M. 1947, 64-326; amd. Sec. 21, Ch. 177, L. 1979.

Cross-References

Reports to Governor, 1-12-104, 2-15-401, 2-15-501, 19-12-202, 20-3-105, 20-25-301, 22-1-503, 22-2-106, 22-3-107, 32-2-306, 39-51-301, 39-71-210, 44-10-202.

49-3-303. Repealed. Sec. 14, Ch. 540, L. 1983.

History: En. 64-329 by Sec. 14, Ch. 487, L. 1975; R.C.M. 1947, 64-329; amd. Sec. 1, Ch. 168, L. 1981.

49-3-304. Filing complaints. A complaint under this chapter must be filed with the commission within 180 days after the alleged unlawful discriminatory practice occurred or was discovered. A complaint not filed within that time may not be considered by the commission.

History: En. Sec. 5, Ch. 540, L. 1983.

49-3-305. Form of complaint. A complaint filed with the commission must be in the form of a written, verified complaint, stating the name and address of the state or local governmental agency alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice.

History: En. Sec. 6, Ch. 540, L. 1983.

49-3-306. Temporary relief by court order. (1) At any time after a complaint is filed with the commission under this chapter alleging an unlawful discriminatory practice, the commission may file a petition in the district court in the county in which the subject of the complaint occurred or in the county in which a respondent resides or transacts business, seeking appropriate temporary relief against this practice, including an order restraining the respondent from interfering in any manner with an order the commission may enter with respect to the complaint.

(2) The court has the power to grant the temporary relief or restraining order it considers just and proper. However, no relief or order extending beyond 14 days may be granted except by consent of the respondent or upon a finding by the court that there is reasonable cause to believe that the respondent has engaged in discriminatory practices.

History: En. Sec. 7, Ch. 540, L. 1983.

49-3-307. Informal settlement. The commission staff shall promptly and impartially investigate the matters set out in a complaint filed with the commission. If the staff determines that the allegations are supported by substantial evidence, it shall immediately try to eliminate the discriminatory practice by informal conference, conciliation, and persuasion.

History: En. Sec. 8, Ch. 540, L. 1983.

49-3-308. Contested case hearing before commission. (1) If the informal efforts to eliminate the discrimination alleged in a complaint filed with the commission are unsuccessful, the staff shall inform the commission of the failure and the commission shall serve written notice, together with a copy of the complaint, requiring the state or local governmental agency charged in the complaint to answer the allegations of the complaint at a hearing before the commission.

(2) The commission hearing must be held in the county where the unlawful conduct is alleged to have occurred unless the state or local governmental agency charged in the complaint or the commission requests a change of venue for good cause shown. The case in support of the complaint may be presented before the commission by the commission staff, the complainant, or

an attorney representing the complainant. The hearing and any subsequent proceedings under this chapter must be held in accordance with the Montana Administrative Procedure Act, except as provided in 49-3-311.

(3) The commission may make provisions for defraying the expenses of an indigent party in a contested case hearing held pursuant to this chapter.

(4) The prevailing party in a hearing under this section may bring an action in district court for attorney fees. The court in its discretion may award the prevailing party reasonable attorney fees. Such action must comply with the Montana Rules of Civil Procedure.

History: En. Sec. 9, Ch. 540, L. 1983.

49-3-309. Procedure upon a finding of discrimination by commission. (1) If the commission finds that a state or local governmental agency against which a complaint was filed has engaged in the discriminatory practice alleged in the complaint, the commission shall order it to refrain from engaging in the discriminatory practice. The order may:

(a) prescribe conditions for the governmental agency's future conduct relevant to the type of discriminatory practice found;

(b) require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against; and

(c) require a report on the manner of compliance.

(2) The order may not require the payment of punitive damages.

(3) If a commission order or conciliation agreement requires inspection by the commission staff for a period of time to determine if the respondent is complying with the order or agreement, the period of time may not exceed 3 years.

History: En. Sec. 10, Ch. 540, L. 1983.

49-3-310. Procedure upon failure by commission to find discrimination. If the commission finds that a state or local governmental agency against which a complaint was filed has not engaged in the discriminatory practice alleged in the complaint, it shall issue and serve on the complainant an order dismissing the complaint.

History: En. Sec. 11, Ch. 540, L. 1983.

49-3-311. Enforcement of commission order. If the commission's order is not obeyed, the commission staff or a party may petition the district court in the county where the discriminatory practice occurred or in which the respondent resides or transacts business to enforce the commission's order by any appropriate order.

History: En. Sec. 12, Ch. 540, L. 1983; amd. Sec. 2, Ch. 539, L. 1985.

Compiler's Comments

1985 Amendment — Applicability: In second clause, after "staff", deleted "shall" and inserted "or a party may"; and at end after "order", substituted "by any appropriate order" for "by injunction".

Section 3(2), Ch. 539, L. 1985, provided: "This act applies to cases pending with the commission for human rights or the district court on its effective date and to cases filed with the commission for human rights on or after its effective date (effective April 18, 1985)."

49-3-312. Filing a complaint in district court. (1) The commission staff shall, at the request of either party, issue a letter entitling the complainant to file a discrimination action in district court if:

(a) the commission has not yet held a contested case hearing pursuant to 49-3-308 and has determined that it will be unable to hold a contested case hearing within 12 months of the date the complaint was filed under 49-3-304; and

(b) 180 days have elapsed since the complaint was filed and the efforts of the commission staff to settle the complaint after informal investigation pursuant to 49-3-307 are unsuccessful.

(2) Within 90 days after receipt of a letter issued by the commission pursuant to subsection (1), the complainant shall petition the district court in the district in which the alleged violation occurred for appropriate relief. If the claimant fails to petition the district court within 90 days after receipt of a letter issued by the commission, the complaint shall be barred.

(3) If the district court finds, in an action under this section, that a state or local governmental agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice alleged in the complaint, the court may provide the same relief as described in 49-3-309 for a commission order. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees.

History: En. Sec. 13, Ch. 540, L. 1983.

Cross-References

Injunctions, Title 27, ch. 19.

CHAPTER 4

RIGHTS OF THE HANDICAPPED

Part 1 — Discrimination in Employment

Section
49-4-101. Discrimination prohibited.
49-4-102. Penalty and civil remedy.

Part 2 — Rights of the Physically Disabled

49-4-201. Repealed.
49-4-202. Policy of the state.
49-4-203. Definition.
49-4-204 through 49-4-210 reserved.
49-4-211. Right to use public places and accommodations.
49-4-212. Access to housing accommodations.
49-4-213. Use of white or metallic-colored canes restricted to the blind.
49-4-214. Right to be accompanied by a guide or hearing dog.
49-4-215. Penalty for violating rights.
49-4-216. Duty and civil liability of pedestrian or driver approaching blind person.
49-4-217. Penalty for violation of duty or unauthorized use of cane.

Part 3 — Special Parking Permits Motorized Wheelchairs

49-4-301. Who eligible for special parking permit.
49-4-302. Privileges of permitholder — privilege for disabled veteran — exemptions from time limits — requirements for special parking spaces.
49-4-303. Applications for permit.
49-4-304. Special license plate or card to be provided and displayed.
49-4-305. Expiration of permit.

49-4-306. Department of justice to publicize permit.
49-4-307. Penalty.
49-4-308 through 49-4-310 reserved.
49-4-311. Use of motorized wheelchairs on public streets.
49-4-312. Regulation by municipalities.

Part 4 — Preference in Leasing of Concessions (Repealed. Sec. 14, Ch. 175, L. 1981)

Part 5 — Interpreters for the Deaf in Official Proceedings

49-4-501. Policy.
49-4-502. Definitions.
49-4-503. Deaf person as participant in judicial or administrative proceeding — interpreter to be used.
49-4-504. Preliminary determination.
49-4-505. Intermediary interpreter to be used.
49-4-506. Interpreter in full view.
49-4-507. Coordination of interpreter requests.
49-4-508. Oath of interpreter.
49-4-509. Compensation.
49-4-510. Waiver.
49-4-511. Privileged communications.

Chapter Cross-References

Income tax exemption for handicapped child, 15-30-114.

Sheltered workshops — public contracts to purchase, Title 18, ch. 5, part 1.

Special education supervisor, 20-3-103.

Special education for exceptional children, Title 20, ch. 7, part 4.

State School for the Deaf and Blind, Title 20, ch. 8.

Library services for the handicapped, 22-1-103.

Medical and health insurance — continuation of coverage for handicapped child, 33-22-304, 33-22-506, 33-30-1003, 33-30-1004.

Regulation of speech pathologists and audiologists, Title 37, ch. 15.

Exemption from barber apprenticeship fees, 37-30-307.

Exemption from cosmetology examination and fees, 37-31-308.

Exclusion from minimum wage and overtime compensation laws, 39-3-406.

Workers' compensation — vocationally handicapped, Title 39, ch. 71, part 9.

Workers' compensation — vocational rehabilitation, Title 39, ch. 71, part 10.

Mental competency of criminal defendants, Title 46, ch. 14.

Duty of state to develop services for handicapped children, 50-1-202.

Accessibility of buildings built with public funds, 50-60-201.

Child rehabilitation, 53-4-113.

Adoption of hard-to-place children, Title 53, ch. 4, part 3.

Adult services, Title 53, ch. 5.

Vocational rehabilitation, Title 53, ch. 7.

Developmentally disabled, Title 53, ch. 20.

Mentally ill, Title 53, ch. 21.

No discrimination based on evaluation or treatment relating to mental illness, 53-21-189.

Ineligibility for driver's license, 61-5-105.

Advertising by public utilities of special equipment to aid handicapped, 69-3-307.

Exemption from death taxes — property transferred to certain children's hospitals, 72-16-312.

Exceptions to fishing and hunting license requirements, Title 87, ch. 2, part 8.

Part 1

Discrimination in Employment

49-4-101. Discrimination prohibited. It is unlawful to discriminate, in hiring or employment, against a person because of the physical handicap of such person. There is no discrimination where the nature or extent of the handicap reasonably precludes the performance of the particular employment or where the particular employment may subject the handicapped or his fellow employees to physical harm.

History: En. Sec. 3, Ch. 77, L. 1974; R.C.M. 1947, 64-304(part).

49-4-102. Penalty and civil remedy. A person who practices discrimination in violation of 49-4-101 commits a misdemeanor and is also liable in a district court action for civil damages and attorney's fees by the person discriminated against. Should the person who allegedly practiced discrimination prevail in the civil action, he shall be entitled to recover reasonable attorney's fees from the person who alleged the discrimination.

History: En. Sec. 3, Ch. 77, L. 1974; R.C.M. 1947, 64-304(part).

Cross-References

Misdemeanor penalty, 46-18-212.

Part 2

Rights of the Physically Disabled

49-4-201. Repealed. Sec. 11, Ch. 239, L. 1983.

History: En. Sec. 1, Ch. 181, L. 1971; R.C.M. 1947, 71-1303.

49-4-202. Policy of the state. It is the policy of the state to encourage and enable the blind, the visually handicapped, the deaf, and the otherwise physically disabled to participate fully in the social and economic life of the state and to engage in remunerative employment. The blind, the visually handicapped, the deaf, and the otherwise physically disabled shall be employed in the state service, the service of the political subdivisions of the state, the public schools, and all other employment supported in whole or in part by public funds on the same terms and conditions as the able-bodied, unless it is shown that the particular disability prevents the performance of the work involved.

History: En. Sec. 2, Ch. 181, L. 1971; R.C.M. 1947, 71-1304; amd. Sec. 1, Ch. 176, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "the deaf" after "visually handicapped" in first and second sentences.

49-4-203. Definition. "Housing accommodation" means any real property or portion thereof which is used or occupied or is intended, arranged, or designed to be used or occupied as the home, residence, or sleeping place of one or more human beings but does not include any single-family residence the occupants of which furnish for compensation not more than one room therein.

History: En. 71-1305.1 by Sec. 5, Ch. 266, L. 1975; amd. Sec. 2, Ch. 35, L. 1977; R.C.M. 1947, 71-1305.1(2).

49-4-204 through 49-4-210 reserved.

49-4-211. Right to use public places and accommodations. (1) The blind, the visually handicapped, and the deaf have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.

(2) The blind, the visually handicapped, and the deaf are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, as defined in 69-11-101, and all public accommodations, as defined in 49-2-101, subject only to the conditions and limitations established by law and applicable alike to all persons.

History: En. Sec. 3, Ch. 181, L. 1971; amd. Sec. 1, Ch. 266, L. 1975; R.C.M. 1947, 71-1305(2), (3); amd. Sec. 22, Ch. 177, L. 1979; amd. Sec. 2, Ch. 176, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "and the deaf" after "visually handicapped" in (1) and (2).

49-4-212. Access to housing accommodations. (1) Blind, visually handicapped, and deaf persons are entitled to as full and equal access as other members of the general public to any housing accommodation offered for compensation in this state.

(2) Nothing in this section requires a person renting, leasing, or providing real property for compensation to modify his property in any way or provide a higher degree of care for a blind, visually handicapped, or deaf person than for a person who is not so disabled.

History: En. 71-1305.1 by Sec. 5, Ch. 266, L. 1975; amd. Sec. 2, Ch. 35, L. 1977; R.C.M. 1947, 71-1305.1(1), (3); amd. Sec. 3, Ch. 176, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "and deaf" after "visually handicapped" in (1); inserted "or deaf" after "visually handicapped" in (2); and made minor changes in phraseology.

49-4-213. Use of white or metallic-colored canes restricted to the blind. No person, except those wholly or partially blind, shall carry or use on any street or highway or in any other public place a cane or walking stick which is white or metallic in color or white or metallic tipped with red.

History: En. Sec. 3, Ch. 181, L. 1971; amd. Sec. 1, Ch. 266, L. 1975; R.C.M. 1947, 71-1305(1).

49-4-214. Right to be accompanied by a guide or hearing dog. (1) Every totally or partially blind or deaf person has the right to be accompanied by a guide or hearing dog, especially trained for the purpose, in any of the places mentioned in 49-4-211(2) without being charged extra for the guide or hearing dog. He is liable for any damage done to the premises or facilities by such dog.

(2) Every totally or partially blind or deaf person who has a guide or hearing dog or who obtains a guide or hearing dog is entitled to full and equal access to all housing accommodations as provided in 49-2-305 and 49-4-212. He may not be required to pay extra compensation for the guide or hearing dog but is liable for any damage done to the premises by the guide or hearing dog.

History: En. Sec. 4, Ch. 181, L. 1971; amd. Sec. 2, Ch. 266, L. 1975; R.C.M. 1947, 71-1306; amd. Sec. 23, Ch. 177, L. 1979; amd. Sec. 4, Ch. 176, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "or deaf" after "blind" near the beginning of (1) and (2); inserted "or hearing" between "guide" and "dog" throughout.

49-4-215. Penalty for violating rights. Any person, firm, or corporation or the agent of any person, firm, or corporation who denies or interferes with admittance to or enjoyment of the public facilities enumerated in 49-4-211 or otherwise interferes with the rights of a totally or partially blind, deaf, or otherwise disabled person under 49-4-211 is guilty of a misdemeanor.

History: En. Sec. 4, Ch. 266, L. 1975; R.C.M. 1947, 71-1309; amd. Sec. 5, Ch. 176, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "deaf" after "blind" near the end of the section.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Misdemeanor penalty, 46-18-212.

49-4-216. Duty and civil liability of pedestrian or driver approaching blind person. (1) A pedestrian who is not totally or partially blind or a driver of a vehicle who approaches or comes in contact with a person who is totally or partially blind and is carrying a cane or walking stick predominately white or metallic in color or white tipped with red or is being led by a trained guide dog wearing a harness and walking on either side of or slightly in front of such blind person shall immediately come to a full stop and take such precautions before proceeding as may be necessary to avoid accident or injury to such blind person.

(2) A driver or pedestrian who fails to take such precautions is liable in damages for any injury caused the totally or partially blind person. A totally or partially blind pedestrian who is not carrying such a cane or using a guide dog in any of the places listed in 49-4-211 has all of the rights and privileges conferred by law upon other persons, and the failure of such a pedestrian to carry such a cane or to use a guide dog in any such place may not be held to constitute or be evidence of contributory negligence.

History: En. Sec. 5, Ch. 181, L. 1971; amd. Sec. 3, Ch. 266, L. 1975; R.C.M. 1947, 71-1307; amd. Sec. 24, Ch. 177, L. 1979.

Cross-References

Liability, Title 27, ch. 1, part 7.

49-4-217. Penalty for violation of duty or unauthorized use of cane. Any person other than a person wholly or partially blind who shall carry a cane or walking stick such as is described in this part, contrary to the provisions of this part, or who shall fail to heed the approach of a person carrying such a cane as is described by this part or who shall fail to come to a full stop when approaching or coming in contact with a person so carrying such a cane or walking stick or being led by a trained guide dog or who shall fail to take precaution against accidents or injury to such person after coming to a stop, as provided for herein, is guilty of a misdemeanor punishable by a fine not to exceed $25.

History: En. Sec. 6, Ch. 181, L. 1971; R.C.M. 1947, 71-1308.

Part 3

Special Parking Permits
Motorized Wheelchairs

49-4-301. Who eligible for special parking permit. (1) The department of justice shall issue a special parking permit to a person who:

(a) holds a valid Montana driver's license and owns a motor vehicle, other than a commercial vehicle, and has a permanent physical handicap that impairs his mobility when not in a motor vehicle;

(b) regardless of whether he holds a driver's license or owns a motor vehicle, has a permanent physical handicap that impairs his driving ability and impairs his mobility when not in a motor vehicle to such an extent that he needs to be driven by another person to a destination; or

(c) has a temporary physical handicap that impairs his driving ability or his mobility when not in a motor vehicle to such an extent that he needs to be driven by another person to a destination.

(2) No one applicant may receive more than one permit.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(1), (6); amd. Sec. 1, Ch. 614, L. 1983.

Compiler's Comments

Code Commissioner Correction: The Code Commissioner has substituted the department of justice for the division of motor vehicles in this section, because sec. 14, Ch. 503, L. 1985, repealed 2-15-2002, which had statutorily created the division, and sec. 1, Ch. 503 amended Title 61, Motor Vehicles, to substitute "department" for "division" throughout that title. The apparent intent was to eliminate the statutory status of the division, and therefore the Code Commissioner has changed statutory references accordingly (see 1-11-101(2)(g)).

1983 Amendment: Inserted (1)(c).

Cross-References

Special license plates for handicapped, 61-3-445.

49-4-302. Privileges of permitholder — privilege for disabled veteran — exemptions from time limits — requirements for special parking spaces. (1) The parking permit issued under this part, when displayed, entitles a person to park a motor vehicle in special parking spaces reserved for handicapped persons whether on public property or, upon the request of the private property owner, on private property available for public use.

(2) No vehicle other than one lawfully displaying a parking permit issued under this part or one displaying a distinguishing handicapped person's license plate or placard issued by a foreign jurisdiction conferring the same parking privileges as conferred in subsection (1) and conveying a handicapped person or one displaying a specially inscribed license plate issued under 61-3-451 and conveying a 100% disabled veteran may be parked in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by handicapped persons.

(3) The governing body of a city, town, or county may exempt vehicles lawfully displaying parking permits issued under this part and vehicles lawfully displaying specially inscribed license plates issued under 61-3-451 and parked in public places along public streets from any time limitation imposed upon parking in such area except in areas where:

(a) stopping, standing, or parking of all vehicles is prohibited;

(b) only special vehicles may be parked; or

(c) parking is not allowed during specific periods of the day in order to accommodate heavy traffic.

(4) The governing body of a city, town, or county may impose all, but not less than all, of the following requirements with respect to any special parking space constructed after September 30, 1985, and reserved for handicapped persons on public or private property in accordance with subsection (2):

(a) The space must be located on a smooth, level surface as near as practicable to building entrances or walkways that have curb cuts and appropriately designed ramps and access lanes to accommodate wheelchairs.

(b) If parallel to curbside, the parking space must be separated from an adjacent space, either in the front or the rear, by at least 5 feet of striped no-parking area.

(c) If at an angle to curbside, the parking space must be at least 8 feet wide and free of obstruction if located at the end of a line of angle parking spaces, and each other angle parking space designated for handicapped persons must be at least 13 feet wide.

(d) A parking space reserved for handicapped persons must be designated by a sign showing the international symbol of accessibility and indicating that a permit is required. The sign must be attached to a wall or post in such a way that it is not obscured by a vehicle parked in the space.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(2); amd. Sec. 2, Ch. 614, L. 1983; amd. Sec. 2, Ch. 71, L. 1985; amd. Sec. 1, Ch. 203, L. 1985; amd. Sec. 1, Ch. 616, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 71 near middle of (2) inserted "or one displaying a specially inscribed license plate issued under 61-3-451 and conveying a 100% disabled veteran"; and near middle of (3) inserted "and vehicles lawfully displaying specially inscribed license plates issued under 61-3-451".

Chapter 203 near beginning of (2) inserted "or one displaying a distinguishing handicapped person's license plate or placard issued by a foreign jurisdiction conferring the same parking privileges as conferred in subsection (1)".

Chapter 616 inserted (4).

1983 Amendment: In (1) after "handicapped persons", inserted remainder of subsection; and inserted (2) and (3).

49-4-303. Applications for permit. (1) Applications for a special parking permit may be made to the department of justice on forms provided by the department, which must require sufficient information to determine eligibility for a permit. The application must be accompanied by:

(a) a certificate from a licensed physician describing the extent of the applicant's disability; and

(b) a fee of $1.

(2) Applications shall be available at the office of the county treasurer in each county and directly from the department.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(4), (5).

Compiler's Comments

Code Commissioner Correction: The Code Commissioner has substituted the department of justice for the division of motor vehicles in this section, because sec. 14, Ch. 503, L. 1985, repealed 2-15-2002, which had statutorily created the division, and sec. 1, Ch. 503 amended Title 61, Motor Vehicles, to substitute "department" for "division" throughout that title. The apparent intent was to eliminate the statutory status of the division, and therefore the Code Commissioner has changed statutory references accordingly (see 1-11-101(2)(g)).

49-4-304. Special license plate or card to be provided and displayed. (1) The department of justice shall provide a special license plate under 61-3-445 or a card to be displayed on or in a motor vehicle to indicate a parking privilege granted under this part. The special license plate shall be affixed to the vehicle according to 61-3-301, or the card shall be prominently displayed in the windshield of a vehicle when the parking privilege is being used by the handicapped person in a vehicle other than the one to which his special license plate is affixed.

(2) Upon application under 49-4-303, a handicapped person who does not hold a driver's license or does not own a vehicle may receive a card described in subsection (1) to be displayed in a vehicle in which the handicapped person is being conveyed when the parking privilege is being used.

(3) The card must bear a representation of a wheelchair as the symbol of a handicapped person.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(3); amd. Sec. 3, Ch. 614, L. 1983; amd. Sec. 4, Ch. 159, L. 1985.

Compiler's Comments

1985 Amendment: In (1) near beginning of first sentence, after "plate", inserted "under 61-3-445"; and in (3) after "The", deleted "special license plate or".

Code Commissioner Correction: The Code Commissioner has substituted the department of justice for the division of motor vehicles in this section, because sec. 14, Ch. 503, L. 1985, repealed 2-15-2002, which had statutorily created the division, and sec. 1, Ch. 503 amended Title 61, Motor Vehicles, to substitute "department" for "division" throughout that title. The apparent intent was to eliminate the statutory status of the division, and therefore the Code Commissioner has changed statutory references accordingly (see 1-11-101(2)(g)).

1983 Amendment: In (1), in first sentence inserted "special license" and changed "may be" to "to be", in second sentence required that the "special license plate shall be affixed to the vehicle according to 61-3-301" and at end inserted "by the handicapped person in a vehicle other than the one to which his special license plate is affixed", and changed phraseology; and inserted (2) and (3).

49-4-305. Expiration of permit. A permit expires on:

(1) the death of the permittee; or

(2) certification by a physician that the permittee's physical handicap impairing his mobility no longer exists.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(7); amd. Sec. 4, Ch. 614, L. 1983.

Compiler's Comments

1983 Amendment: Substituted (1) and (2) for "December 31 of the year of issue".

49-4-306. Department of justice to publicize permit. (1) The department of justice shall publicize the provisions of 49-4-301 through 49-4-305 in a manner designed to inform those eligible for a special parking permit.

(2) The department of justice shall budget sufficient funds to accomplish the requirements of subsection (1).

History: En. Sec. 1, Ch. 32, L. 1981.

Compiler's Comments

Code Commissioner Correction: The Code Commissioner has substituted the department of justice for the division of motor vehicles in this section, because sec. 14, Ch. 503, L. 1985, repealed 2-15-2002, which had statutorily created the division, and sec. 1, Ch. 503 amended Title 61, Motor Vehicles, to substitute "department" for "division" throughout that title. The apparent intent was to eliminate the statutory status of the division, and therefore the Code Commissioner has changed statutory references accordingly (see 1-11-101(2)(g)).

49-4-307. Penalty. A person who parks a motor vehicle in violation of 49-4-302(2) is guilty of a misdemeanor and is punishable by a fine of not less than $10 or more than $100.

History: En. Sec. 6, Ch. 614, L. 1983.

49-4-308 through 49-4-310 reserved.

49-4-311. Use of motorized wheelchairs on public streets. A person who by reason of physical disability is unable to move about as a pedestrian may operate a self-propelled wheelchair or similar vehicle during daylight hours on the streets of a city or town. When operated on public streets, such vehicles must display the slow moving equipment emblem required in 61-9-415(2) or be equipped with a windwhip displaying a red flag.

History: En. 11-911.1 by Sec. 2, Ch. 369, L. 1974; R.C.M. 1947, 11-911.1.

49-4-312. Regulation by municipalities. Use of self-propelled wheelchairs and similar vehicles may be regulated by cities and towns.

History: En. 11-911.2 by Sec. 3, Ch. 369, L. 1974; R.C.M. 1947, 11-911.2.

Part 4

Preference in Leasing of Concessions (Repealed. Sec. 14, Ch. 175, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

49-4-401. En. Sec. 2, Ch. 66, L. 1951; R.C.M. 1947, 71-1302; amd. Sec. 1, Ch. 474, L. 1979.

49-4-402. En. Sec. 1, Ch. 66, L. 1951; R.C.M. 1947, 71-1301(part).

49-4-403. En. Sec. 1, Ch. 66, L. 1951; R.C.M. 1947, 71-1301(part).

49-4-404. En. Sec. 2, Ch. 474, L. 1979.

49-4-405. En. Sec. 3, Ch. 474, L. 1979.

49-4-406. En. Sec. 4, Ch. 474, L. 1979.

Part 5

Interpreters for the Deaf in Official Proceedings

Part Cross-References

State School for the Deaf and Blind, Title 20, ch. 8.

Regulation of speech pathologists and audiologists, Title 37, ch. 15.

Workers' compensation for occupational deafness, Title 39, ch. 71, part 8.

49-4-501. Policy. It is the policy of this state to secure the constitutional rights of deaf persons who, because of impairment of hearing or speech, are unable to readily understand or communicate spoken language and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.

History: En. Sec. 1, Ch. 245, L. 1979.

49-4-502. Definitions. As used in this part, the following definitions apply:

(1) "Appointing authority" means the presiding judge or justice of any court, the chairman of any board, commission, or authority, the director or commissioner of any department or agency, or any other person presiding at any hearing or other proceeding in which a qualified interpreter is required pursuant to this part.

(2) "Deaf person" means a person whose hearing is totally impaired or whose hearing is so seriously impaired as to prohibit the person from understanding oral communications. The term further includes, but is not limited to, a person who, because of loss of hearing, cannot communicate spoken language.

(3) "Principal party in interest" means a person who is a named party in any proceeding or who will be directly affected by the decision or action which may be made or taken.

(4) "Qualified interpreter" means an interpreter listed by the department of social and rehabilitation services as provided in 49-4-507.

(5) "Intermediary interpreter" means a knowledgeable deaf person who, because of his intimate acquaintance with deaf persons who use mainly natural gestures for communicating, can be used as an intermediary between the deaf person and a qualified interpreter.

History: En. Sec. 2, Ch. 245, L. 1979.

49-4-503. Deaf person as participant in judicial or administrative proceeding — interpreter to be used. A qualified interpreter shall be appointed as follows:

(1) In any case before any court or a grand jury in which a deaf person is a party, either as a complainant, defendant, or witness, the court shall appoint a qualified interpreter to interpret the proceedings to the deaf person and interpret his testimony or statements and to assist in preparation with counsel.

(2) At all stages in any proceeding of a judicial or quasi-judicial nature before any agency of the state or governing body or agency of a local government in which a deaf person is a principal party in interest, either as a complainant, defendant, witness, or supplicant, the agency or governing body shall appoint a qualified interpreter to interpret the proceedings to the deaf person and to interpret his testimony or statements.

(3) (a) In any proceedings in which a deaf person may be subjected to confinement or criminal sanction or in any proceeding preliminary thereto, including a coroner's inquest, grand jury proceedings, and proceedings relating to mental health commitments, the presiding judicial officer shall appoint a qualified interpreter to assist the deaf person throughout the proceedings.

(b) Upon arresting a deaf person for an alleged violation of a criminal law and prior to interrogating or taking a statement of the deaf person, the arresting law enforcement official shall make available to the person, at the earliest possible time, a qualified interpreter to assist the person throughout such interrogation or taking of a statement.

(c) No statement, written or oral, made by a person who is deaf in reply to a question of a law enforcement officer or any other person having a prosecutorial function in any criminal or quasi-criminal proceeding may be used against that deaf person unless either the statement was made or elicited through a qualified interpreter and was made knowingly, voluntarily, and intelligently or, in the case of waiver, the court makes a special finding that any statement made by the deaf person was made knowingly, voluntarily, and intelligently.

(d) This subsection (3) does not apply to apprehensions, arrests, or statements involving a violation of the traffic laws of Montana.

History: En. Sec. 3, Ch. 245, L. 1979.

Cross-References

Commitment of the developmentally disabled, Title 53, ch. 20, part 1.

Commitment of the seriously mentally ill, Title 53, ch. 21, part 1.

49-4-504. Preliminary determination. The appointing authority may not appoint a qualified interpreter in any case until he makes a preliminary determination that the qualified interpreter is able to accurately communicate with and translate information to and from the deaf person in the case.

History: **En. Sec. 4, Ch. 245, L. 1979.**

49-4-505. Intermediary interpreter to be used. If a qualified interpreter states that he is unable to render a satisfactory interpretation and that an intermediary interpreter will improve the quality of interpretation, the appointing authority shall appoint an intermediary interpreter to assist the qualified interpreter subject to the same provisions that govern a qualified interpreter under this part.

History: **En. Sec. 5, Ch. 245, L. 1979.**

49-4-506. Interpreter in full view. In any action or proceeding in which an interpreter is required to be appointed, the court or administrative authority may not commence proceedings until the appointed interpreter is in full view of and spatially situated to assure proper communication with the deaf person or persons involved as participants.

History: **En. Sec. 6, Ch. 245, L. 1979.**

49-4-507. Coordination of interpreter requests. (1) Whenever an appointing authority is required to appoint an interpreter, the authority shall request the department of social and rehabilitation services to furnish the authority with a list of qualified interpreters. If the choice of qualified interpreters does not meet the needs or wishes of the deaf person, the appointing authority shall appoint another qualified interpreter.

(2) The Montana association of the deaf and the Montana registry of interpreters for the deaf shall provide the department of social and rehabilitation services with a list of qualified and available interpreters.

(3) The only function of the department of social and rehabilitation services is to maintain the list referred to in subsection (2).

History: **En. Sec. 7, Ch. 245, L. 1979.**

49-4-508. Oath of interpreter. Every interpreter appointed to interpret for a deaf person, before entering upon his duties, shall take an oath that he will make a true interpretation in an understandable manner to the person for whom he is appointed and that he will repeat the statements of such person in the English language to the best of his skill and judgment.

History: **En. Sec. 8, Ch. 245, L. 1979.**

49-4-509. Compensation. An interpreter appointed to interpret for the deaf is entitled to receive a reasonable fee for his services, together with his actual expenses for travel and transportation. The appointing authority shall set the fee. When the interpreter is appointed in a criminal proceeding, the fee shall be paid out of the county general fund; and when the interpreter is otherwise appointed, the fees shall be paid out of funds available to the appointing authority.

History: **En. Sec. 9, Ch. 245, L. 1979.**

49-4-510. Waiver. The right of a deaf person to an interpreter may not be waived except by a deaf person who requests a waiver in writing. Such waiver is subject to the approval of counsel to the deaf person, if existent, and is subject to the approval of the appointing authority.

History: **En. Sec. 10, Ch. 245, L. 1979.**

49-4-511. Privileged communications. Any information that the interpreter gathers from the deaf person pertaining to any proceeding then pending shall at all times remain confidential and privileged, on an equal basis with the attorney-client privilege, unless such deaf person desires that such information be communicated to other persons.

History: **En. Sec. 11, Ch. 245, L. 1979.**

Cross-References

Attorney-client privilege, 26-1-803.

DOES NOT
CIRCULATE